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ABSTRACT

Four state official civil rights agencies (the Nebraska Equal Opportunity Commission, the Commission on Indian Affairs, the Mexican-American Commission and the Nebraska Commission on the Status of Women) and four local civil rights agencies (the Commission on Human Rights of the City of Grand Island, the Lincoln Commission on Human Rights, the Omaha Human Relations Department, and the Mayor's Commission on the Status of Women in Omaha) are described in this report. This investigation shows that most of the agencies face similar problems: inadequate budget, false expectations by client groups, insufficient staff, lack of adequate staff training, and limited powers. Among the recommendations that are made to the state legislature and to the individual state agencies are the following: amending the enabling legislation of the Nebraska Equal Opportunity Commission, the Mexican-American Commission, and the Commission on Indian Affairs; having each agency analyze its training needs; giving enforcement agencies the power to initiate investigations of patterns and practices of a denial of civil rights; and upgrading the budgets of the agencies examined to a level commensurate with the agency's responsibilities. (Author/AM)

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NEBRASKA'S OFFICIAL CIVIL RIGHTS AGENCIES

—A report of the Nebraska Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Nebraska Advisory Committee.

August 1975

UD 016636

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NEBRASKA'S OFFICIAL CIVIL RIGHTS AGENCIES

DEC 17 1976

--A report prepared by the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Nebraska Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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LETTER OF TRANSMITTAL

NEBRASKA ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
August 1975

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Sirs and Madam:

The Nebraska Advisory Committee submits this report of its investigation of Nebraska's official civil rights agencies as part of its responsibility to advise the Commission about civil rights problems within the State.

During our 7-month investigation we examined the four State official civil rights agencies--the Nebraska Equal Opportunity Commission, the Commission on Indian Affairs, the Mexican-American Commission and the Nebraska Commission on the Status of Women, and four local civil rights agencies--the Commission on Human Rights of the City of Grand Island, the Lincoln Commission on Human Rights, the Omaha Human Relations Department, and the Mayor's Commission on the Status of Women (Omaha).

Through its research, the Advisory Committee found that the Nebraska Equal Opportunity Commission was created to avoid Federal intervention rather than to promote civil rights activity. Many of the other civil rights agencies studied were created for the same purpose.

The Advisory Committee found that most of the agencies face a similar set of problems: inadequate budget, false expectations by client groups, insufficient staff, lack of adequate staff training, and limited powers.

The Advisory Committee is making recommendations to the State legislature and to the individual State agencies. These include: amending the enabling legislation of the Nebraska Equal Opportunity Commission, the Mexican-American Commission, and the Commission on

Indian Affairs; having each agency analyze its training needs; giving enforcement agencies the power to initiate investigations of patterns and practices of a denial of civil rights; and upgrading the budgets of the agencies examined to a level commensurate with the agency's responsibilities.

We urge you to concur with our recommendations and to assist this Advisory Committee in followup activities.

Respectfully,

/s/

JOHN A. GALE
Chairperson

ACKNOWLEDGMENTS

The Advisory Committee wishes to thank the staff of the Commission's Central States Regional Office, Kansas City, Mo., for its help in the preparation of this report.

This project was the principal staff assignment of Etta Lou Wilkinson, with writing and review assistance from Leslie A. Berger and Melvin L. Jenkins, and support from Gloria O'Leary and Jo Ann Poole. The report was prepared under the overall supervision of Thomas L. Neumann, regional director, Central States Regional Office.

Final edit and review was conducted in the Commission's Office of Field Operations, Washington, D.C., by Bonnie Mathews, acting chief editor, assisted by Bruce E. Newman, and Audree B. Holton.

Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the Act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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I. INTRODUCTION

The decade of the 1960s was a unique period of civil rights progress in America. The Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Housing Act of 1968 represented the first far-reaching national civil rights legislation in a century. This Federal action was mirrored at the State and local levels as well. For example, the Nebraska Equal Opportunity Commission was created in 1965, and local human relations commissions were established in Omaha (1966), Lincoln (1966), and Grand Island (1970). In addition to these agencies which have civil rights enforcement responsibilities, public "pro-active" agencies have also been chartered. These are agencies which lack enforcement powers and are usually charged with developing information regarding issues covering specific groups, e.g., Mexican Americans, Native Americans, or women. Often they fulfill an ombudsman or advocacy role for clients.

By the early 1970s, much of the public enthusiasm for civil rights appeared to have waned. Whites generally expressed the opinion that enough had been done for minorities, particularly for blacks, while minorities just as resolutely believed that little change had actually taken place during the previous decade.

In the meantime, official civil rights agencies[1] were experiencing profound change. In some States, these changes were developmental; increased staff enabled the handling of larger caseloads. Significant

1. For purposes of this report an "official agency" is one that has been constituted as a public entity either by legislative action or executive order. Organizations established by private citizens or private agencies are not included in this definition.

case law was being made, and far-reaching conciliation settlements were effecting rapid revision of recruitment, testing, and hiring practices. The civil rights commission in Michigan is recognized as having enjoyed this kind of developmental growth and influence.

On the whole, however, official human rights agencies have begun to experience more troublesome times. Agencies have received increased jurisdiction, for example, discrimination based on sex or physical disability, without receiving additional resources to handle larger complaint loads.[2] The results have been long delays between the filing of a complaint and its resolution, larger backlogs, accusations of inefficiency, and intensified frustration for complainants, respondents, and staff investigators.

The Nebraska Advisory Committee to the U.S. Commission on Civil Rights on March 22, 1974, decided to undertake a survey of the eight official civil rights agencies in the State--the Nebraska Equal Opportunity Commission, the Commission on Indian Affairs, the Nebraska Mexican American Commission,[3] the Nebraska Commission on the Status of Women, the Commission on Human Rights of the City of Grand Island, the Lincoln Commission on Human Rights, the Omaha Human Rights Department, and the Mayor's Commission on the Status of Women (Omaha).

For more than a year the Advisory Committee collected information regarding the agencies and found that the general public knew far too little about them to make fullest use of them. Relatively little was known about their statutory responsibilities, their structures, functions, budgets, and their relationships to other Federal, State, or local entities (in fact, at the outset of the investigation it was not certain how many official agencies existed in the State). Sporadic news reports in the media are generally limited to decisions on significant complaint cases or comments by officials on current events related to civil rights.

The study consisted primarily of questionnaires mailed to agency heads, followed by personal interviews with staff executives, agency policymakers, elected officials having supervisory authority over the agencies, media representatives, and clients of the agencies. A total of 55 persons were interviewed individually.

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2. Galen Martin, "New Civil Rights Act Coverages--Progress or Racism" (paper delivered at the Conference of National Association of Human Rights Workers, New York, N.Y., Oct. 8, 1974).

3. Nebraska legislation hyphenates "Mexican-American"; the U.S. Commission on Civil Rights omits the hyphen in its usage.

It is the Advisory Committee's hope that this report will prove useful to all Nebraskans by making them more aware of the services the agencies offer. It should also help the agencies themselves assess their own achievements and needs more accurately. (This should not be construed as an "efficiency study," for the Advisory Committee did not attempt to measure the degree of effectiveness achieved by an agency in terms of its goals or the utilization of its resources.) Similarily, it should provide elected officials and government administrators charged with oversight of the agencies with a fuller perspective of the latter's problems and accomplishments. Finally, the Advisory Committee suggests that the report might be of interest to civil rights agencies in other States which may be undergoing similar experiences.

The continuing viability of official civil rights agencies is a major concern of the U.S. Commission on Civil Rights, which has recently sponsored a series of regional civil rights conferences. The first conference, held in St. Louis, Mo., February 1974, provided impetus for this Advisory Committee report.

Nebraska Profile

Nebraska is unique in having a unicameral State legislature. There are 49 districts whose incumbents are selected in nonpartisan elections and are called senators.

Nebraska's 1970 population, as reported by the U.S. Bureau of the Census, is 1,483,493, reflecting a 5.1 percent increase since 1960.[4] This consists of 1,411,330 whites (95.1 percent), 39,911 blacks (2.7 percent), 21,067 persons of Spanish language (1.4 percent), 6,624 Native Americans (0.4 percent), 2,189 Asian Americans (0.1 percent), and 1,902 persons of "other" races (0.1 percent).[5]

4. U.S., Department of Commerce, Bureau of the Census, General Population Characteristics-Nebraska, 1970 Census of Population, No. PC(1)-B29 Nebr., p. 29--47 (hereafter referred to as General Population Characteristics).

5. Ibid., p. 29--49, U.S., Department of Commerce, Bureau of the Census, General Social and Economic Characteristics-Nebraska, 1970 Census of Population, No. PC(1)-C29 Nebr., p. 29--176 (hereafter cited as General Social and Economic Charactistics).

The U.S. Commission on Civil Rights believes that census figures represent undercounts of minorities, particularly persons of Spanish speaking background.[6] Females constitute a majority, or 51.2 percent, of the State's population. There are 759,038 females as compared with 724,455 males.[7]

Nebraska has three standard metropolitan statistical areas (SMSA's)--[8] Lincoln, Omaha, and Sioux City. The Omaha and Sioux City SMSAs include parts of Iowa. The Omaha and Lincoln metropolitan areas contain 42 percent of the State's population and approximately 71 percent of the State's minority population.[9]

The Lincoln SMSA, located in southeast Nebraska, had a 1970 population of 167,972, an 8.2 percent increase since 1960.[10] Table 1.1 indicates the race and sex composition of this population.

6. See U.S., Commission on Civil Rights, Counting the Forgotten--the 1970 Census Count of Persons of Spanish Speaking Background in the United States (April 1974).

7. General Population Characteristics, p. 29--49.

8. The U.S. Office of Management and Budget defines an SMSA as "...a county or group of contiguous counties (except in New England) which contains at least one central city of 50,000 inhabitants or more or 'twin cities' with a combined population of at least 50,000. Contiguous counties are included in an SMSA if, according to certain criteria, they are found to be metropolitan in character and socially and economically integrated with the central city."

9. General Population Characteristics, pp. 29--34, 29--49, 29--63. General Social and Economic Characteristics, pp. 29--176 and 29--265.

10. General Population Characteristics, p. 29--47.

Table 1.1

Race and Sex Composition of Population--Lincoln SMSA 1970

	Total	White	Spanish Language	Black	Native American	Asian American	Other
Total	100%	96.5%	1.3%	1.4%	0.3%	0.2%	0.2%
	167,972	162,065	2,113	2,432	531	417	414
Male	100%	96.1%	1.3%	1.6%	0.3%	0.3%	0.3%
	81,832	78,676	1,099	1,324	277	238	218
Female	100%	96.8%	1.2%	1.3%	0.3%	0.2%	0.2%
	86,140	83,389	1,014	1,108	254	179	196

Source: U.S. Bureau of the Census

The Omaha SMSA, located to the northeast of the Lincoln SMSA in extreme east-central Nebraska, had a 1970 population of 540,142. This represents an 18.0 percent increase since 1960.[11] The majority of this population (453,151 or 83.9 percent) lives in the Nebraska portion of the SMSA.[12] Table 1.2 below subdivides this population according to race and sex. Again, it should be noted that the minority group statistics may be seriously undercounted.

Table 1.2

Race and Sex Composition of Population--Omaha SMSA (Nebraska Portion) 1970

	Total	White	Spanish Language	Black	Native American	Asian American	Other
Total	100%	89.5%	1.9%	8.0%	0.3%	0.2%	0.2%
	453,151	405,353	8,647	36,207	1,301	958	685
Male	100%	89.5%	2.0%	7.8%	0.3%	0.2%	0.2%
	219,607	196,724	4,285	17,238	627	402	331
Female	100%	89.3%	1.9%	8.1%	0.3%	0.2%	0.2%
	233,544	208,629	4,362	18,969	674	556	354

Source: U.S. Bureau of the Census

11. Ibid.

12. General Population Characteristics, p. 29--63.

Grand Island is the third most populous city in Nebraska. Located in the south-central portion of the State, it reported a 1970 population of 31,269.[13] This can be broken down as follows:

Table 1.3

Race and Sex Composition of Population--Grand Island 1970

	Total	White	Spanish American	Black	Native American	Asian American	Other
Total	100%	96.9%	2.5%	0.3%	0.1%	0.1%	0.1%
	31,269	30,289	784	94	40	22	40
Male	100%	99.3%[1]	(2)	0.3%	0.1%	0.1%	0.1%
	14,747	14,648[1]	(2)	50	19	10	20
Female	100%	99.4%[1]	(2)	0.3%	0.1%	0.1%	0.1%
	16,522	16,425[1]	(2)	44	21	12	20

1 Includes persons of Spanish language.
2 Figures unavailable by sex.

Source: U.S. Bureau of the Census.

Scottsbluff is located in the panhandle region of western Nebraska. According to the U.S. Bureau of the Census its 1970 population was 14,507.[14] Table 1.4 shows the race and sex composition of this population. Persons of Spanish language compose 84.3 percent of Scottsbluff's minority population.

13. Ibid., p. 29--47.

14. Ibid.

Table 1.4

Race and Sex Composition of Population--Scottsbluff 1970

	Total	White	Spanish American	Black	Native American	Asian American	Other
Total	100%	86.0%	11.8%	0.4%	1.3%	0.3%	0.2%
	14,507	12,478	1,711	56	191	40	31
Male	100%	97.9%[1]	(2)	0.3%	1.2%	0.3%	0.3%
	6,861	6,716[1]	(2)	23	84	19	19
Female	100%	97.7%[1]	(2)	0.4%	1.4%	0.3%	0.2%
	7,646	7,473[1]	(2)	33	107	21	12

1 Includes persons of Spanish language.
2. Figures unavailable by sex.

Source: U.S. Bureau of the Census

II. NEBRASKA EQUAL OPPORTUNITY COMMISSION

Background

The first civil rights enforcement agency in Nebraska, formerly known as the Nebraska Equal Employment Opportunity Commission, was created August 3, 1965, with the passage of Legislative Bill 656, the Fair Employment Practice Act.[15] The Nebraska Civil Rights Act of 1969[16] changed the name to the Nebraska Equal Opportunity Commission (NEOC).

In language and concept, the Fair Employment Practice Act closely parallels the Federal law (Title VII of the Civil Rights Act of 1964),[17] which went into effect July 2, 1965. There is general agreement among political observers and civil rights leaders in Nebraska that the chief motive for State legislators to create a rights agency at the time was the desire to preempt the newly formed Federal agency--the U.S. Equal Employment Opportunity Commission (EEOC)--from exercising direct jurisdiction in the State. Title VII, Section 706(b), prescribed deference by EEOC to State and local laws. Therefore, in any State having a civil rights agency enforcing substantially similar laws, EEOC must grant said agency up to 120 days to take action upon a discrimination complaint.

The legislative history of the act documents sufficiently that this factor weighed heavily with the legislators when creating NEOC. They wanted to create a "kept" agency, one that would keep Federal agents out of the State and yet not become too concerned with the rights of minorities.

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15. Revised Statutes of Nebraska, §48-1101--48-1125.

16. Ibid., §20-105--20-125.

17. 42 U.S.C. 2000e, et. seq.

Although the bill was sponsored by Senator Edward Danner of Omaha, a black legislator, so many crippling amendments were added that ultimately he stated he would support the bill in its final form only because it was the best he could obtain from the 1965 legislature.[18]

Senator Danner's bill was reshaped significantly by two business groups that appeared in favor of the measure--the Associate Industries of Nebraska and the State Chamber of Commerce. Earl Luff, executive director of the former, told the Labor Committee, which conducted hearings on the bill:

> *Now we have a Federal law which, although not entirely equitable, is far more so than any bill offered in our legislature, including the one now being considered. LB656 is unacceptable to us in its present form; however, unless we have a law of our own, Nebraska employers will come under the bureaucratic control of Federal agents in Washington who know nothing of the conditions and situation in Nebraska.*[19]

The Chamber of Commerce representative, Omaha attorney Dean Wallace, offered a rewrite of the bill. Among the suggested changes were:

1. a requirement that business and labor be heavily represented on the Commission (four of the seven seats);[20]
2. that the minimum for a quorum be raised from four to five;
3. that the provision for the State commission to delegate its powers to duly created city commissions be dropped;
4. that complaints be filed under oath;

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18. State of Nebraska, 75th Legislature, "Floor Debate for LB656," (June 14, 1965), p. 1,972 (hereafter cited as "Floor Debate").

19. State of Nebraska, 75th Legislature, Hearing Before the Labor Committee (Mar. 24, 1965), p. 12.

20. Although this requirement was subsequently repealed, the current commission includes four representatives from business.

5. that the newly created agency receive its legal representation from the attorney general (rather than hiring private attorneys, as the Danner bill provided);

6. that the agency not be allowed to conduct educational programs; and

7. that the agency not be empowered to issue "cease and desist" orders against an employer judged by the agency to have discriminated against a complainant.[21]

These suggestions were incorporated into the Labor Committee's revised bill. At the opening of floor debate on June 14, 1965, Senator Terry Carpenter asked if "this bill as amended represents the viewpoint of the Nebraska State Chamber of Commerce." Senator Danner replied: "That is correct."[22]

In the course of the investigation by the Advisory Committee, the business associations were frequently cited as primary opponents of the civil rights agencies. Mel Snodgrass, public affairs director of the Nebraska Association of Commerce and Industry, insisted in an October 1974 interview that the association has consistently supported civil rights legislation.[23] The position of the National Association of Manufacturers, with whom the Nebraska body is affiliated, has always been that State and local laws should conform closely to the Federal law. "This eliminates a lot of red tape and legal problems for corporations operating in Nebraska," Mr. Snodgrass said.[24]

Senator Carpenter threatened to oppose the amended bill because he felt it was meaningless for the State's minorities. Senators opposed to civil rights legislation indicated their readiness to join him. Senator Albert A. Kjar attempted to forestall this move by repeating the view of the Chamber of Commerce:

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21. Ibid.

22. "Floor Debate," p. 1,970.

23. Mel Snodgrass, interview in Lincoln, Nebr., Oct. 24, 1974, (hereafter cited as Snodgrass interview).

24. Ibid.

> *I don't think it was the opinion of the committee that this bill should be killed. I think they felt it should be passed, that there are Federal laws and regulations affecting the civil rights and Nebraska shouldn't be in a position to have a Federal law come in and supersede State law and it was the thinking of the committee if we keep this as nearly as we can to the Federal regulation, the bill would be acceptable.*[25]

A motion by Senator Dale L. Payne was passed which required that agency rules and regulations be approved by majority vote of the legislature.[26] The usual practice was to have State agencies set their own operating guidelines, with a review for legal sufficiency by the State attorney general.

The Senate majority faced a genuine dilemma: they did not want a strong civil rights agency, but they had to have an agency or run the risk of Federal involvement. Senator Sam Klaver described their plight:

> *In 16 days this [Federal Civil Rights Act] becomes the law of the land. [If we do not act, we will let] the Federal Government create a commission here with plenty of employees and plenty of inspectors and whatnot to enforce the law.*
>
> *Your choice is just this--do you want the people of your own State to be on a commission to rule and regulate this matter or do you want Federal people to come in here under Federal laws and Federal inspection of all kinds and FBI agents to come in here and enforce the law?*[27]

The legislators passed LB656 by a vote of 40-7, "on a wave of labor and management support."[28]

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25. "Floor Debate," p. 1,972.

26. Ibid., p. 1,990.

27. Ibid.

28. "Fair Employment Bill Passed by Legislature," Lincoln Journal, July 27, 1965.

Commission

The seven members of the commission are appointed by the Governor for 3-year terms. The 32 persons who have served as members have stayed an average of slightly less than 2 years each. Members have resigned for various reasons, including press of business, relocation outside Nebraska, or disagreement with commission operations. Of the current members, one, Frances Dunson of Omaha, has served a record 5 years. The chairperson, Essie Burden of Lincoln, is currently in her second term. The others have served less than 3 years.

The commission elects its own officers. R. D. Anderson of Lincoln was the first chairperson. Commissioners are not compensated for their services but do receive reimbursement for expenses while performing their duties. Compensation of board members has long been of concern to lawmakers and staff members alike. The Chamber of Commerce recommended in 1965 that commission members receive an honorarium of $40 per day, plus expenses, for every day worked. This amendment passed in a preliminary vote but was eliminated before final passage of the bill.

Since that time, the Nebraska Indian Commission and the Mexican-American Commission have been created; both recompense their board members with a $35 per diem plus expenses. NEOC Executive Director Lawrence Myers and his predecessor Reid Devoe both feel strongly that NEOC commission members should receive similar remuneration.[29] They argue that, in addition to being equitable, it would help insure a quorum at each meeting.

One unique feature of the equal employment commission is the absolute power it has over its staff. The commission may appoint such clerks, agents, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.[30]

By this authority the commissioners, not the director, have total control over staff. In practice, the commissioners hire all the professionals, while the executive director hires the clerical staff. This anomaly in management practice has been criticized by Mr. Devoe as erosive of the director's ability to coordinate staff operations.

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29. Lawrence Myers, interview in Lincoln, Nebr., Oct. 23, 1974, (hereafter cited as Myers interview I); Reid Devoe, interview in Lincoln, Nebr., Feb. 19, 1975, (hereafter cited as Devoe interview).

30. Revised Statutes of Nebr., §48-1116.

Charles Clark, regional administrator of the Federal EEOC in Kansas City, Mo., described this arrangement as "unique and of highly questionable utility." Any reasonable approach to management, he said, would dictate that the executive director have control over the staff.[31]

Staff

Although NEOC was in operation on October 8, 1965, it moved very slowly. State civil rights leaders chided it for failing to hire a staff director until a year later.[32] In October 1966, Emmitt Dennis, a black, was appointed the first executive director. Two years later he became director of the State Motor Vehicle Department and was succeeded by Reid Devoe who directed the agency until he resigned in October 1973. Deputy Director Wright P. Robinson served as acting director until June 1974, when Lawrence Myers was appointed as the third person to hold the position of executive director.

Since NEOC's inception, the staff has grown to 17--11 of whom staff the central office and 6, the Omaha field office. Three employees are under an EEOC contract which terminates December 31, 1975, while another three are under the Public Employment Program scheduled to terminate June 30, 1975. The commission has plans to open another field office in the Scottsbluff area during 1975.

As of April 1, 1975, the professional staff consisted of seven males and four females--one white, one Native American, one Mexican American, one Asian American and seven blacks. The clerical staff consisted of six persons--two black females, two white females, and two white males. Normally, the director interviews all job applicants and submits a list of the top candidates to the commission. State personnel requirements must be observed with regard to qualifications and pay scales. Mr. Myers told interviewers that staff employees do not have civil service standing but serve at the will of the commission. The small number of employees allows for fairly close interaction between staff and commission members. Some veteran employees have established working and personal relationships with commissioners, which can compromise the director's authority over staff operations.[33]

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31. Charles Clark, interview in Kansas City, Mo., Jan. 16, 1975 (hereafter cited as Clark interview).

32. "Employment Unit 'Drags Feet,'" Lincoln Journal, July 2, 1966.

33. Devoe interview.

Budget

The NEOC has experienced slow but steady growth since it was established in 1965--its budget was increased from $118,000 in 1973 to $151,000 in 1974. However, its budget is low in comparison to other State regulatory agencies, such as the State Real Estate Commission, which issues real estate licenses and regulates real estate practices through a complaint procedure. The Real Estate Commission, with a staff of 13, had a budget of $332,903 in 1974--120 percent more than NEOC.

NEOC had requested about twice the 1974 budget figure for 1975--$287,960. The request ran counter to the austerity measures of Governor J. J. Exon. Because lower revenues were anticipated due to the 1974 drought, the Governor had ordered all State agencies to request no more than a 10 percent increase over the 1974 budget. The 91 percent increase in NEOC's budget request for 1975 is attributed to the aggressive philosophy of Executive Director Myers. He said the increment is necessary because of the rapidly expanding caseload and the need for a field office in the Scottsbluff area.[34] In March 1975 it was not yet known what amount would be funded; the legislative budget called for $247,435, but the Governor's office had pared the amount to $186,613, and the budget committee has accepted the Governor's recommendation.

Functions

The Equal Opportunity Commission is empowered to enforce the following Nebraska laws:

Fair Employment Practice Act, 1965, amended in 1967, 1969, and 1973.[35]
The Equal Pay Act of Nebraska, 1969.
Nebraska Civil Rights Act of 1969.
Act Prohibiting Unjust Discrimination in Employment Because of Age, 1972.

Nebraska Fair Employment Practice Act

This act, whose legislative history was described earlier, prohibits discrimination in hiring, firing, or promoting any individual on the basis of race, color, religion, sex, disability, or national origin. The law applies to employers having 15 or more workers, labor

34. Myers interview I.

35. Revised Statutes of Nebraska, §48-1101--48-1125.

unions, and employment agencies. It also establishes the Nebraska Equal Opportunity Commission to implement the law with the following powers and duties.[36]

1. To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the State;

2. To hold hearings, subpoena witnesses, take sworn testimony, and require the production of documents related to employment discrimination;

3. To cooperate with the Federal Government and local human rights agencies;

4. To attempt to eliminate unfair employment practices by means of conference, conciliation, and persuasion; and

5. To require that every employer, employment agency, and labor organization subject to Sections 48-1101 to 48-1125 [the Act] shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed.

Equal Pay Act of Nebraska[37]

This legislation only affects wage practices related to sex discrimination. It states that no employer having at least 25 workers shall pay a lower wage rate to any employee of the opposite sex. Wage differentials, however, "are allowable where they are made pursuant to: a) an established seniority system, b) a merit increase system, or c) a system which measures earning by quality other than sex."[38] The act prohibits an employer who pays different wages to men and women from lowering the wages of the higher paid employee in order to effect equality.[39]

The unique feature of the Equal Pay Act is that upon receipt of a written request from an employee alleging wage discrimination because of sex, the NEOC "may bring any legal action necessary on behalf of the employee to collect such claim for unpaid wages."[40]

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36. Ibid., §48-1117.

37. Ibid., §48-1219--48-1127.

38. Ibid., §1121(1).

39. Ibid., §48-1121(2).

40. Ibid., §48-1223(4).

The commission does not have this authority for employment cases involving race, age, or disability. The act also allows a longer period for filing complaints, i.e., 4 years, contrasted with a limitation of 180 days for other employment complaints.[41]

Nebraska Civil Rights Act of 1969

The Civil Rights Act[42] relates to the acquisition of housing and the enjoyment of public accommodations. With respect to housing, the law prohibits discrimination based on race, color, religion, or national origin. Sex is not covered. Eight specific unlawful acts are cited:[43]

1. Refusing to show a house or apartment or refusing to accept a bona fide offer.
2. Placing discriminatory conditions or terms into a contract.
3. Using advertising which indicates discriminatory or preferential treatment.
4. Indicating that a dwelling is not available when in fact it is available.
5. Making inquiry into the race, color, religion, or national origin of a prospective customer.
6. Including restrictive convenants in a housing contract.
7. Discharging an employee for complying with this act.
8. Blockbusting (soliciting to buy or sell housing by generating fear of racial change in a neighborhood.)

The law also prohibits mortgage lenders and real estate broker associations from denying their services to any of the protected groups.[44]

41. Ibid., §48-1224.

42. Ibid., §20-105--20-125.

43. Ibid., §20-107.

44. Ibid., §20-108, 20-109.

A complainant has the option to bring the complaint to the NEOC or to the local county attorney, who has the same powers and duties as the commission. The act provides for an investigation and an attempt to resolve the complaint by conference, conciliation, and persuasion. No hearing process is involved in housing complaints. Instead of conducting its own hearing, the NEOC can petition the appropriate district court for injunctive relief. This may include orders enjoining the respondent from renting or selling the dwelling in question. The commission must take court action within 30 days of deciding that the complaint cannot be conciliated voluntarily.[45] A complaint must be filed within 180 days of the alleged discriminatory occurrence.[46]

The act grants the Nebraska attorney general the power to initiate court action where there is reasonable cause to believe that anyone is engaged in "a continuous pattern and practice of resistance" to equal housing opportunity.[47]

In summary the housing act differs from employment in these respects:

1. It does not include sex discrimination.

2. It enables the NEOC to go into court on behalf of the complainant. (In this it is similar to the Equal Pay Act, but different from the Fair Employment Practice Act.)

3. It allows the attorney general to initiate pattern and practice suits.

The act also provides that all persons in the State be entitled to "a full and equal enjoyment of any place of public accommodations.... without discrimination [based on] race, color, sex, religion, national origin, or ancestry."[48]

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45. Ibid., §20-117.

46. Ibid., §20-119.

47. Ibid., §20-120(2).

48. Ibid., §20-132.

The act is broad in coverage, extending to all businesses offering goods, services, and accommodations to the public. Private clubs are exempt.[49]

Complaints must be filed within 10 days of the occurrence of the alleged violation.[50] The attorney general must also sign and file the complaint with the NEOC. If after an investigation the commission determines that the charge is reasonable, it must attempt conciliation. Should this fail, the NEOC will conduct a public hearing. The attorney general's office will represent the complainant at the hearing.[51] The NEOC decides the case on its merits. Its ruling can be appealed to district court.[52]

The law makes no mention of monetary damages other than court costs. Respondents found guilty of discriminatory practices are required only to extend full unsegregated accommodations to all persons.[53]

Act Prohibiting Unjust Discrimination in Employment Because of Age

The age discrimination act[54] prohibits employees with 25 or more workers from refusing to hire or otherwise discriminate against individuals between 40 and 65 years of age. It also affects labor unions and employment agencies.

In administering this act, NEOC is permitted to hire technical assistance, including legal assistance, on a fee-for-service basis. It can also "bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating" this law.[55] There are no specific time limitations within which the complaint must be filed. Within 30 days of receipt of the complaint, NEOC must investigate the complaint and initiate court action; failing this,

49. Ibid., §20-133.

50. Ibid., §20-141.

51. Ibid., §20-140.

52. Ibid., §20-142.

53. Ibid., §20-141(4).

54. Ibid., §48-1001--48-1009.

55. Ibid., §48-1007(4).

the complainant may take court action[56] on his or her own behalf.

The act provides that the court shall grant appropriate relief, including employment, reinstatement, promotion, or cash amounts compensating for unpaid wages.[57]

Table 2.1 indicates the types of discrimination prohibited under these laws.

Table 2.1

Coverage Under Nebraska Civil Rights Laws

Protected Areas / Basis of Discrimination	Employment	Housing	Public Accommodations
Race/Color	X	X	X
Religion	X	X	X
Sex	X		X
Age	X		
National Origin/Ancestry	X	X	X
Disability	X		

Certain employees (in sex and age discrimination cases) can obtain legal representation from the State, but others (race and disability cases) do not have access to this important resource. In some cases (employment, public accommodations) the commission may only hold public hearings. In others (housing, equal pay, age discrimination) it may go directly into court on behalf of any complainant deemed to have been the victim of discrimination. The limitation for filing a complaint ranges from within 10 days of the alleged violation (public accommodations) to 180 days (housing and most employment cases) to no apparent limits (age discrimination in employment).

This unevenness in NEOC's mandate is a matter of concern to commissioners and staff members alike. They argue that the "crazy quilt" pattern is both confusing and discriminatory and that legislative action is needed to extend the prohibition of discrimination because of sex, age, and disability to housing, and extend age and disability to public accommodations. In addition, the cities of

56. Ibid., §48-1008.

57. Ibid., §48-1009.

of Grand Island, Lincoln, and Omaha have ordinances which differ from State law and from each other. The lack of uniformity complicates enforcement and frustrates interagency cooperation. As mentioned, the Nebraska Association of Commerce and Industry continues to lobby for uniform fair employment laws for all cities and towns throughout the State. Mel Snodgrass, public affairs director, indicated that Nebraska employers are encountering ever-increasing legal costs due to the differences in coverage in cities around the State.[58]

Investigation Procedures

NEOC is directed under State law to make full use of "conference, conciliation, and persuasion." In settling complaints, however, the small size of the staff has made this difficult. Lawrence Myers indicated that this voluntary approach would be explored more fully "as soon as we can make some headway with the current caseload of complaints."[59] Mr. Myers noted that his previous employer, the Omaha Human Relations Department, had a community relations division which was able to exert a positive influence in employment questions. Through its administration, he said, some systemic changes were brought about, thereby forestalling a number of individual complaints. Mr. Myers said he hopes to replicate this approach at the State level as soon as staffing permits. Whether a change in the law is needed is not immediately clear. Currently, NEOC is authorized to conduct public education only in the area of housing.

The format for processing a discrimination complaint is set forth in the respective laws governing NEOC's jurisdiction in employment, housing, and public accommodations. Because employment cases constitute the vast majority of NEOC's caseload, the procedures governing the Fair Employment Practice Act will be used for illustration. Where housing or public accommodation investigations differ in procedure, the deviations will be noted.[60]

Receipt of Charge - A person may file only on his or her own behalf. NEOC does not have power to initiate a complaint on its own, even where it has reason to suspect a systemic pattern of discrimination by an employer. All complaints must be made under oath or affirmation within 180 days of the alleged act of discrimination.

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58. Snodgrass interview.

59. Myers interview I.

60. Revised Statutes of Nebraska, §48-1118--48-1120.

Notice of Charge - Within 10 days after receiving the charge, NEOC must notify the person against whom the charge is made (the respondent) of the date, place, and circumstances of the alleged unlawful practice(s).

NEOC Staff Investigation - Cases are investigated by staff in the chronological order in which they were filed. In February 1975 each investigator had as many as 115 cases open. Average time for staff investigation was estimated to be 9 to 12 months.[61]

Dismissal or Determination of Probable Cause - At the conclusion of the staff investigation, NEOC either dismisses the charge or finds that there is probable cause of unlawful practice. Dismissal can occur if the complainant does not cooperate fully with the investigation.[62]

Conciliation Conference - Within 60 days after finding probable cause, the commission must hold a conciliation conference with the parties. The conference site must be within 35 miles of the place where the alleged violation took place. No material discussed in this conference is recorded, nor can it be disclosed by NEOC staff. If both parties agree to conciliate, terms are approved by NEOC and a conciliation order is issued. NEOC can monitor the settlement and issue a complaint of violation of same up to 18 months after approving the conciliation order.

Issuance of Complaint and Notice of Public Hearing - If no approved settlement results from the conciliation conference or if the conciliation order is violated by the respondent, the commission issues a written complaint and a notice of a public hearing. Up to this point the NEOC has been dealing with a "charge." By notifying the parties of the hearing, NEOC has adopted the complainant's cause, and the process has become a formal "complaint."

The hearing, which is held between 20 and 60 days of the service of the complaint, is similar to most administrative hearings. It uses sworn testimony and the same rules of evidence as apply in Nebraska courts of record. A hearing examiner appointed by the commission or a commissioner selected by unanimous vote of the commission conducts the hearing. This is open to the public, and a stenographic record is made of the oral arguments and any written briefs.

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61. Myers interview I.

62. State of Nebraska, "Rules and Regulations of the Equal Opportunity Commission," (1970), p. 4.

The hearing examiner (or hearing commissioner) makes a finding based only on the evidence presented in the official record. The finding can be a dismissal of the complaint or an order to cease and desist. The latter can also require affirmative action by the respondent including but not limited to: hiring, reinstatement, upgrading or promotion, restoration of seniority or other benefits, and awarding appropriate back pay.

Recommended Order and Decision - After the hearing examiner makes a decision, either party has 15 days to petition for a review. If neither party so petitions and the commission determines that the decision is supported by substantial evidence, the decision can become an official order of NEOC. The party adversely affected may request a review of the decision or a trial de novo by the commission. An appeal of the decision may be taken to the district court of any Nebraska county where the respondent resides or transacts business. The district court shall have exclusive jurisdiction and final judgment on the matter, "subject to appellate view as provided by law."[63]

Complaint Caseload

The number of cases brought to the commission has been growing dramatically year by year. Table 2.2 illustrates this fact.

Table 2.2

Complaints Received by NEOC 1965 - 1973

Year	Employment	Housing	Public Accommodations	Total
1965*	2			2
1966*	17			17
1967*	43			43
1968*	58			58
1969	87	2	0	89
1970	122	11	0	133
1971	162	12	1	175
1972	217	13	4	234
1973	340	25	3	368
TOTAL	1,048	63	8	1,119

*NEOC jurisdiction extended only to employment until 1969.

Source: Nebraska Equal Opportunity Commission

63. Revised Statutes of Nebraska, §48-1120.

The increased caseload has not been accompanied by a corresponding expansion of staff; unsurprisingly, a case backlog is building rapidly. Table 2.3 indicated NEOC's case disposition.

Table 2.3

Case Disposition, NEOC,
1965 - November 16, 1973

Disposition	Number of Complaints
Closed	882
Under Investigation	164
Public Hearing Ruling	19
District Court	21
Awaiting Commission Ruling	17
Conciliation	16
TOTAL	1,119

Source: Nebraska Equal Opportunity Commission

At the end of 1973, only 240 cases remained unresolved; 1 year later that number had grown to 541. In addition, the number of hearings ordered during 1974 dropped to 13, down from 19 in 1973.[64]

Deputy Director Wright P. Robinson attributed the lower output to three factors: 1) the absence of an executive director for the first half of 1972, 2) the substantial amount of time needed to train new field investigators, and 3) the lack of funds to hold hearings.[65] According to material provided by the International Association of Human Rights Agencies, Nebraska ranked third poorest among State agencies in investigator work loads with a ratio of 76 cases per investigator.[66] NEOC officials acknowledged the figure had grown to

64. State of Nebraska, Equal Opportunity Commission, "Annual Report," (1973), p. 10 (hereafter cited as "Annual Report"). Wright Robinson, NEOC deputy director, interview in Lincoln, Nebr., Mar. 4, 1975 (hereafter cited as Robinson interview).

65. Robinson interview.

66. Arthur L. Green, International Association of Official Human Rights Agencies, testimony before U.S. Congress, House of Representatives, Committee on Education and Labor, (Sept. 18, 1974), p. 5a.

about 90 cases per investigator. Field representative Roger Elliott said on February 19, 1975, that he was handling 115 cases.[67]

Mr. Robinson said he looked for the caseload to be reduced during 1975. He noted that the commissioners had authorized the executive director to close cases administratively. Formerly, all cases had to be investigated by staff and then held until the next commission meeting for a vote by that body. He said he also foresees installation of a new "complaint intake system," whereby one staff person will handle the formal preparation of all discrimination charges so investigators can be spared the time-consuming, basically clerical detail.[68]

Records on the disposition of complaints were not available at NEOC. The Advisory Committee was unable to obtain recent data on the number or percentage of cases in which NEOC decided for the complainant or how it found for the respondent. The most recent documentation available (December 1972) indicated that 23.6 percent of the 589 cases handled had been conciliated, 35.2 percent were dismissed as having no reasonable cause, 24.6 percent were dismissed as beyond NEOC jurisdiction, 12.3 percent were withdrawn by the complainant, and 4.3 percent were closed by administrative decision.[69]

NEOC had no information on the outcome of cases in which its decisions were appealed in court. In the celebrated case, Duffy vs. Physicians Mutual Insurance Co.,[70] the Nebraska Supreme Court upheld the district court's judgment to overturn the NEOC decision, which awarded back pay and medical expenses to the complainant. Jean Duffy, a claims auditor with the Physicians Mutual Insurance Company in Omaha, filed a sex discrimination complaint against the company with NEOC on June 10, 1970. She alleged that she was not paid a salary equal to that received by male employees doing comparable work. Her complaint did not allege a discriminatory practice but only that Physicians Mutual had violated the Fair Employment Practice Act against her as an individual because of her sex. The NEOC hearing examiner found for Ms. Duffy, but Physicians Mutual appealed the decision to district

67. Roger Elliott, interview in Lincoln, Nebr., Feb. 19, 1975.

68. Robinson interview.

69. "Annual Report," p. 22.

70. Jean Duffy v. Physicians Mutual Insurance Co., 191 Nebr., 233, 214 N.W. 2d 471 (1974).

court. The court overturned NEOC's decision because there was no intent to discriminate on Physicians Mutual's part. The State Supreme Court upheld the lower court's decision. One commissioner claimed that NEOC was being "put out of business" by the high court's decision.[71]

Respondents from Scottsbluff appealed to district court and won reversals of NEOC decisions in the two cases tried there during 1973. In Douglas and Lancaster Counties, 11 cases involving NEOC decisions were in district court during the same year. The courts upheld NEOC twice and reversed it four times. Other cases were settled by mutual agreement or were still awaiting decision.

Relationship to the U.S. Equal Employment Opportunity Commission (EEOC)

In the late 1960s NEOC had been among the first agencies to take part in a now-defunct national program of EEOC aimed at reducing systemic discrimination in large corporations. NEOC received Federal funds to develop employment data for the largest employers in Nebraska. It then forwarded this information to EEOC, which took action against Nebraska employers having poor records of minority hiring. In September 1972 the Nebraska attorney general issued an opinion[72] prohibiting further transfers of employers' names to EEOC, although the Federal agency had funded a contract for that specific purpose.

NEOC's compliance with the attorney general's opinion had the practical effect of severing the already deteriorating relationship between NEOC and EEOC. Federal officials felt that NEOC had always been overly sympathetic to employer respondents and did not pursue complaints very aggressively. EEOC Regional Director Charles Clark, in Kansas City, Mo. said that Reid Devoe, executive director of NEOC at the time, had stuck too closely to the "curbstone opinions of the State attorney general,"[73] even when there were opposing opinions from case law. Complainants would sometimes send their cases to the Federal agency after the NEOC had found no probable cause of

71. Linda Ulrich, "Equal Opportunity Unit 'Definition' by Law Sought," Lincoln Journal, Dec. 18, 1973.

72. Betsy G. Berger for Clarence A. H. Meyer to Reid E. Devoe, Aug. 6, 1971, (hereafter cited as "EEOC Opinion"), files of U.S. Commission on Civil Rights, Central States Regional Office.

73. Clark interview.

discrimination. Frequently, EEOC would then obtain a finding of discrimination against the employer, thereby eroding NEOC's credibility among the State's minorities and further straining relations between the two agencies.

Reid Devoe conceded "that NEOC was initially favoring the employer." But by the end of his tenure, he claimed, the number of such decisions had diminished greatly. Mr. Devoe attirbutes the poor relationship between NEOC and EEOC to the manner in which the Federal officials treated their State counterparts. For example, he said, Mr. Clark had kept him and NEOC chairperson R. D. Anderson waiting for an hour on one occasion and had tried to dominate an NEOC meeting on another.[74]

After June 1974, when Mr. Myers became the NEOC director, communication began to improve rapidly between the two agencies. Mr. Myers had worked effectively with EEOC while he was employed by the city of Omaha. On January 21, 1975, the Nebraska commission signed a $36,000 contract with EEOC. The contract calls for the State agency during calendar year 1975 to resolve 120 employment cases to be identified by EEOC. The money is to be used to hire more staff for NEOC to process these referred cases.

While the new contract symbolized a genuine advance in intergovernmental cooperation, one commission member has expressed skepticism over accepting Federal money.[75] Other commissioners, however, have welcomed the improved relationship with EEOC. In February 1975 three NEOC commissioners attended a 3-day EEOC training conference in Omaha. Commissioner Frances Dunson of Omaha has said she hopes the Federal agency can provide both funding and staff training to the State commission. W. C. Mullan, legislative analyst charged with oversight of the NEOC, has expressed the view that the agency should make strong efforts to attract Federal funds.[76]

Mr. Mullan's counterpart, executive budget analyst Patrick McCormally, has noted that roughly two-thirds of Nebraska's 1974 budget consisted of Federal funds.[77] It is no longer uncommon, he said, for a State agency to depend heavily upon Federal outlays and to actively search them out.

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74. Devoe interview.

75. NEOC meeting in Lincoln, Nebr. Oct. 23, 1974.

76. W. C. Mullan, interview in Lincoln, Nebr., Oct. 22, 1974.

77. Patrick McCormally, interview in Lincoln, Nebr., Oct. 22, 1974.

Relations with State Attorney General

The Advisory Committee found widespread agreement that relations between NEOC and the office of the State attorney general were less than satisfactory. Particularly during the tenure of Clarence A. H. Meyer, who retired in December 1974, the attorney general was perceived as frustrating the aims of the commission. This view was reinforced by Mr. Meyer's opinion in 1971 denying NEOC the ability to transfer to EEOC the names of Nebraska employers who allegedly discriminated. That opinion, written by Assistant Attorney General Betsy G. Berger, stated that section 48-1117(5) of the Nebraska Fair Employment Practice Act requires that employers, employment agencies, and labor organizations employing 15 or more employees "...keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed...[and to] preserve such records for such periods...." The statement also cites subsection 3 of section 48-1117. This enables NEOC "to cooperate with the Federal government and with local agencies to effectuate the purposes" of the act.

"Although the statute does not make explicit provision that a confidential status is accorded to data compiled as a result of the commission's power to investigate on its own without a charge by a particular individual," the statement contends "such a requirement is properly implied."[78] In drawing this conclusion, the opinion relies on section 48-1118. However, this deals only with charges made in writing and given under oath and not when requiring data from employers. Therefore, sections 48-1117 and 48-1118 are separate and must be considered in that light. If confidentiality were applied to section 48-1117(3), it would contradict the requirement for cooperation among Federal and local agencies.

The attorney general's statement contains a factual error as well as the questionable legal interpretation detailed above. It erroneously describes Federal civil rights law as permitting preferential treatment of minorities.[79] Federal law states that:

> (j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin....[80]

78. "EEOC Opinion."

79. Ibid.

80. 42 U.S.C. §2000e-2(j).

Attorney General Meyer was influential in persuading the 1974 legislature to turn down a bill that would provide a full-time staff attorney to the Commission on Indian Affairs and the Mexican-American Commission.[81] He argued that the attorney general can provide those agencies with adequate legal representation and that the latter do not have sufficient legal work to warrant full-time counsel. In June 1974 Marilyn Hutchinson was assigned by the attorney general to provide legal counsel to the NEOC. Ms. Hutchinson told Advisory Committee staff that she had no previous experience in civil rights law before taking on the assignment.[82]

Advisory Committee researchers conducted two interviews with the attorney general's office.[83] When Deputy Attorney General G. S. Vitumvas was asked to explain the widely perceived view of conflict between his office and the NEOC, he said that part of the problem is due to a false understanding by NEOC of the attorney general's role. The agency would like the attorney general in subsequent court action to represent complainants who have obtained a favorable decision from the NEOC hearing. This is the practice in Kansas and Iowa. Mr. Vitumvas said that art. 13, sec. 3 of the Nebraska constitution prohibits the use of the State's legal resources on behalf of an individual. Ms. Hutchinson said she has monitored the practices of the attorneys general in Iowa and Kansas, and it is her opinion that some very difficult legal problems have resulted from the arrangements in those States.[84] Mr. Vitumvas said he felt that an office of public defender should be created to supply legal assistance to NEOC complainants who cannot afford private counsel.[85]

The office of the attorney general does not see itself automatically as a legal advisor to NEOC, Mr. Vitumvas pointed out. "We determine what the law requires us to do. We ride herd on them [State agencies]

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81. Dan Griepentrog, State budget analyst, interview in Lincoln, Nebr., Oct. 22, 1974.

82. Marilyn Hutchinson, interview in Lincoln, Nebr., Oct. 24, 1974 (hereafter cited as Hutchinson interview).

83. Ibid. G. S. Vitumvas interview in Lincoln, Nebr., Feb. 18, 1975 (hereafter cited as Vitumvas interview).

84. Hutchinson interview.

85. Vitumvas interview.

when they go beyond the law."[86]

The absence of an "in-house legal counsel" charged with implementing the agency's mission was cited by former NEOC Director Devoe as a serious problem. He recalled that there were times when the commissioners wanted to use initiatory powers which they did not have, or when they wanted to hold meetings that they were not empowered to hold. In Mr. Devoe's opinion, having an in-house counsel would have eliminated both needless delays and interagency friction.[87]

The commission plans to use part of the $36,000 from the EEOC contract to create a new position of legal advisor. The incumbent will not be able to represent NEOC in a court of law but will undertake to ensure legal sufficiency for all commission undertakings.

The attorney general's staff expressed some definite opinions about the performance of NEOC. In their estimate, NEOC is "going backward" in the eyes of the State's minorities and women. They suggested several steps:[88]

1. Adhere more to the legal process; get complaints in acceptable evidentiary form.

2. Spend less time trying to play the conciliator. If agreement does not flow freely, be ready to conduct a hearing.

3. Spend less time "keeping the complainant warm". Do not consult with complainant on every minor development.

4. Set clear priorities and try to carry them out.

Continuing Problems

The NEOC is widely perceived as having generally satisfied the desires of the legislature which created it, i.e., it kept away the Federal agencies without disturbing the status quo. It is viewed as favoring Nebraska employers rather than complainants. Veteran news reporters who have monitored the agency agreed that the NEOC has not been very aggressive and attributed it to several factors:

86. Ibid.

87. Devoe interview.

88. Hutchinson and Vitumvas interviews.

1. The low priority which civil rights matters generally receive in Nebraska politics;

2. The poor working relationship between the NEOC and the State attorney general, upon whom the NEOC depends for all its legal representation;

3. The overly conciliatory attitudes of past and present commissioners and staff members;

4. The lack of specialized training for commissioners and staff;

5. The absence of clear standards of operations.[89]

Staff members of the commission tended to view the agency's problems in terms of basic mathematics - as more complaints pour in each year and staff size remains constant, tensions and dissatisfaction will mount. Currently, a typical investigation takes from 9 to 15 months to complete. That time frame necessarily will lengthen unless staff size is augmented. All four commissioners agreed that a larger staff is needed. One, however, cautioned against bringing in too many new people at once, lest the time needed to train them impedes efforts to reduce the current caseload.[90]

Executive Director Myers pointed out some inherent difficulty in gaining and retaining strong community support. Minority group members, he said:

> *...have a pretty clear understanding of law and justice. They are more generally in contact with criminal law. If they violate the law, or even are accused of violating, they soon find themselves behind bars, awaiting trial or sentencing. When an employer breaks the law by discrimination, these people want to know first, why it takes so long to find him guilty and second why he doesn't have to go to jail. The distinction between criminal law and civil law isn't clearly understood among minorities.*[91]

89. Don Walton, political editor, Lincoln Star, interview in Lincoln, Nebr., Oct. 24, 1974. Dick Herman, editorial manager, Lincoln Journal, Oct. 24, 1974.

90. Paul Ess, telephone interview, Nov. 7, 1974.

91. Myers interview I.

Mr. Myers believes that a civil rights agency cannot attempt to solve all the problems related to minority or women's rights. Rather it should make clear what its limitations are, he said, and do its best at investigating and resolving complaints, which is its main purpose.

Perhaps due to the additional presence of an Indian commission, a Mexican American commission, and a commission on the status of women at the State level, the comment was made by several interviewees that the NEOC is viewed as the State's "commission for blacks."[92] While 6 of the 13 staff members and 2 of the 5 commissioners are black, the agency has exhibited real interest in shedding the image "for blacks only." Chairwoman Burden and Director Myers, both black, are pushing hard for a western field office to better serve the State's Chicano and Indian populations.

However, the presence of four separate agencies advocating independently for the rights of minorities has caused concern to NEOC officials. Executive Director Myers[93] expressed the view that a stronger attack against discrimination could be mounted if the four agencies were merged. Drawing from his experience with the Omaha Human Rights Department, he advocated separate advisory boards to the NEOC for the different minority groups, as part of a Community Relations Division of NEOC. Each could be staffed at the current level and retain present staff, he said, but would have greater access to the investigative/enforcement machinery in NEOC. Mr. Myers argued that communication would be improved among the various groups and better coordination of resources would result. Reid Devoe, former NEOC director, agreed with his successor that a merger would both preserve the separate citizen's boards--for Indians, Mexican Americans, and women--to pursue the special problems of the groups and give better statewide coverage for civil rights. It would probably be more economical as well, he said.[94]

Critics of a merger proposal say it would be attacked by some members of the affected groups, just as Omaha women are protesting the proposed consolidation in that city, and a super-agency would simply become an arena for inflighting amo minorities, women, age groups, and the disabled. Calloused politicians could encourage

such conflict by underfunding the agency. Groups such as the Mexican Americans and Native Americans, who have recently gained a responsive contact point in the State government, could argue that their specific concerns might well be lost among issues affecting the more numerous constituencies such as women and blacks.

Favorable arguments for amalgamation of the agencies maintain that a united thrust could increase their collective impact upon any single issue. Directors of these smaller agencies have been criticized in the past for not solving certain problems of their constituents, even though they lacked any powers of enforcement. As part of a larger agency, enforcement powers could be available to them. Secondly, the agency officials could be both better insulated against frivolous complaints and still be held accountable to their adivsory boards. Programs for the different constituent groups could be coordinated for greater efficiency and economy.

Norman Otto, administrative assistant to Governor Exon, noting how complex State government had grown in the past 15 years, said he felt that competition for funds is the biggest problem with the proliferation of agencies. "Each agency thinks it has to keep growing," he said, "Give one an inch, all the others have to have an inch."[95]

III. NEBRASKA COMMISSION ON INDIAN AFFAIRS

Background

On November 6, 1969, a group of Nebraska Indians from the Omaha, Santee-Sioux, and Winnebago Tribes requested that then Governor Norbert Tiemann "...proceed immediately in establishing, by executive order, a commission on Indian affairs in the State of Nebraska."[96]

Laura Snake, speaking for the group said:

> *We want to define and help solve the so called 'Indian problem.' There is no Indian problem. You have never understood our way of life, our religion, or our culture and have characterized it as inferior.*[97]

Two months later Governor Tiemann formed a 10-member steering committee, composed of two representatives from each of Nebraska's three Indian Tribes--Winnebago, Omaha, and Santee-Sioux, two representatives from the city of Omaha, one from the city of Lincoln, and one from outlying Nebraska. The committee was to recommend members for the commission on Indian affairs. Governor Tiemann told a special legislative session:

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96. Dick Mezzy, "Tribes Seek Indian Affairs Commission," Lincoln Star, Nov. 7, 1969.

97. Ibid.

It is my hope that this Commission will be a vehicle whereby the Indians of the State of Nebraska will be able to work together to solve many of their joint problems.

In keeping with my philosophy in this regard, I desire the Indians to suggest to me the objectives of the Commission, its organizational and membership makeup, and other related matters.[98]

On April 17, 1970, Governor Tiemann established the Governor's Commission on Indian Affairs with 13 Indians appointed to serve on the commission. They received no monetary compensation except their travel expenses.[99] The following June these commissioners selected Robert B. Mackey as the commission's first director. Since the commission was not yet a statutory entity, it had no budget to hire a director. Richard Hoch, legal counsel to Governor Tiemann, said at that time, "the Nebraska commission would represent the first effort to bring together a group composed entirely of Indians. This is the big key that's going to get us some Federal funds.[100] Subsequently, a grant from the U.S. Office of Economic Opportunity (since renamed the Community Services Administration) to the State Technical Assistance Office provided the funds to hire Mr. Mackey as the "Special Indian Community Developer."[101]

In May 1971 the State Senate voted unanimous approval of LB904, establishing the Commission on Indian Affairs as a statutory commission within the State Department of Economic Development for the purpose of fiscal management. The commission's office was opened in Lincoln. In July 1974 the Indian Commission and the State Mexican American commission established a joint western field office in Scottsbluff, Nebraska. Each commission contributes $4,000 annually for its operation.

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98. Associated Press, "Steering Committee Will Recommend Members for Indian Commission," Lincoln Journal, Jan. 17, 1970 (hereafter referred to as "Steering Committee...").

99. "Tiemann Names Indian Affairs Commission," Lincoln Journal, Apr. 8, 1970.

100. Ibid.

101. Associated Press, "Steering Committee...."

Delores Kills-In-Water, an Indian commissioner from Scottsbluff, told Advisory Committee staff that the establishment of a western field office has been a great encouragement to Indian people. In the past, she said, the lack of such an office had contributed to negative views of the commission and limited its credibility.

On January 14, 1975, Senator Jules Burbach introduced LB174 in the Nebraska Legislature which "would create an executive board of the commission that would have authority to supervise the commission's programs relating to the affairs of Nebraska's three Indian tribes."[102]

Director Mackey feels that "the bill was just aimed at giving us some accountability from the tribes. It is in no way aimed at interfering in their tribal government."[103] He also said that the bill clearly defines the responsibility and authority of the executive director.

The bill would also establish a legislative group to study the commission and to provide an evaluation of the executive director and commission members. At this writing, the bill has not been voted on by the Senate.

Commission

The statutory 13-member commission consists of 9 persons, 3 from each reservation; 1 from the city of Lincoln; 2 from the city of Omaha; and 1 from Indian-controlled corporate groups from western Nebraska. The statute provided for the commission to appoint nonvoting members who need not be of Indian ancestry. Seven commission members who began their tenure August 27, 1971, were assigned 3-year terms, and six, were assigned 6-year terms. Designations were drawn by lot. After these orginal appointments, all commission members were to serve 6-year terms.[104] Legislative Bill 37, effective September 2, 1973, increased commission membership from 13 to 15 members, giving western Nebraska two members instead of one. An additional member serves at-large.[105]

102. "Indian Commission Changes Sought," Lincoln Star, Jan. 15, 1975.

103. Ibid.

104. Revised Statutes of Nebraska, §81-1214(2).

105. Ibid., 81-1214(2), as amended.

The bill also changed the length of terms for commissioners. The original 6-year terms were reduced to 4 years, and the 3-year terms were shortened to 2 years. All new appointments will be for 4-year terms.[106] The new bill also provides commissioners a per diem of $35, plus actual expenses for each day of official duties.[107]

At the present time, the commission is required to meet at least once monthly, and eight members are necessary for a quorum. The Lincoln Journal in 1972 reported: "As has often happened in the past, the State Indian Commission's regular monthly meeting Friday failed to draw a quorum and thus failed to permit the Commission to legally act." Mr. Mackey has conceded that attendance has been a problem mainly because meetings are scheduled too frequently.[108]

Legislative Bill 174, now pending before the State Senate, would require the commission to hold quarterly meetings. Members absent without "valid excuses" would be terminated.[109] Commission chairman Louis LaRose told U.S. Commission staff that he favored this bill because it would allow an executive board of the commission to decide routine matters without a full committee meeting.[110]

Staff

From 1970 to 1972 Robert Mackey was the only staff person for the Indian Commission. As of March 1975, the staff consisted of four salaried workers, including the director who is Indian, and four VISTA volunteers. The salaried workers include one administrative assistant in the Scottsbluff area who is Indian, one white administrative assistant in the Lincoln office whose employment was enabled by a public employment program grant, and also in the Lincoln office, one secretary who is white. In the western field office the commission shares a secretary with the Mexican-American Commission. The VISTA volunteers began working with the commission in November 1974 as paralegal assistants. In February 1975 Mr. Mackey was trying to obtain additional VISTA workers.

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106. Ibid.

107. Ibid., §81-1218, as amended.

108. Associated Press, "Indian Bounty Act Repeal Is To Be Target," Lincoln Star-Journal, Aug. 13, 1972 (hereafter cited as "Indian Bounty").

109. State of Nebraska, 84th Legislature, Legislative Bill 174 (1975).

110. Ibid.

On April 18, 1975, the commission hired a lawyer with LEAA funds provided by the Nebraska Commission on Law Enforcement and Criminal Justice. The VISTA office in Kansas City has promised the Indian Commission a VISTA attorney who would be assigned to work in western Nebraska.

According to Mr. Mackey, understaffing is the commission's most serious problem. It is a "practical impossibility," he said, for the commission to handle all Indian concerns with its limited staff. He cited the areas of economic development and mineral rights as demanding special expertise which his staff currently could not provide.[111] Ms. Kills-In-Water agreed that more staff is needed, particularly in the western field office where Steve Janis, administrative assistant, "has to wear too many hats."[112]

Budget

Since its inception in 1971, the commission has received a threefold increase in its budget. The budget primarily covers personnel and operational expenses and does not fund actual programs.

Table 3.1

Commission on Indian Affairs Budget

Year	Amount
FY 72	$20,994
FY 73	31,043
FY 74	61,218
FY 75	63,892

An increase in the 1973-74 budget enables the commission to hire its first administrative assistant and secretary. In 1974-75 the commission received an additional $25,000 for a total budget of $88,892; these additional funds are for Indian programs of alcoholic treatment and rehabilitation in Thurston County, as part of the bill repealing the Indian Bounty Act. The commission is permitted to contract for services from any nonprofit, Indian intertribal development corporation. As of February 1975, no funds for the program had been expended because the commission had not had a quorum at its

111. Robert Mackey, interview in Lincoln, Nebr., Oct. 23, 1974 (hereafter cited as Mackey interview I).

112. Delores Kills-In-Water, interview in Scottsbluff, Nebr., Nov. 20, 1974 (hereafter cited as Kills-In-Water interview).

first few meetings. Consequently, it had to delay closing a contract with the Nebraska Indian Intertribal Development Corporation, located on the Winnebago Reservation.

For 1975-76 the agency requested $89,678, but the Governor has maintained a fiscal "hold-the-line" philosophy.

Functions

By statute, "the purpose of the Commission shall be to join representatives of all Indians in Nebraska to do all things which it may determine to enhance the Indian cause of Indian rights and to develop solutions to problems common to all Nebraska Indians."[113] The commission may:

1. Promote State and Federal legislation beneficial to the Indian community in Nebraska;

2. Coordinate existing programs relating to the Indian community in such areas as housing, education, welfare, medical and dental care, employment, economic development, law and order, and related problems;

3. Work with other State and Federal government agencies and Federal and State elected officials in the development of new programs in areas mentioned under subdivision (2) of this section;

4. Keep the Governor's office appraised of the situation in the Indian community;

5. Provide the public with information and education relevant to Indian affairs in the State of Nebraska; and

6. Develop programs to encourage the total involvement of Indian people in activities for the common benefit of the Indian community.[114]

If LB147 is passed by the State Senate, the commission's executive board would have power to enter into contracts for equipment, services, and supplies not to exceed $2,000.[115]

113. Revised Statutes of Nebraska, §81-1215.

114. Ibid., §81-1217.

115. State of Nebraska, 84th Legislature, Legislative Bill 174 (1975).

The Nebraska Commission on Indian Affairs cannot resolve discrimination complaints nor does it have enforcement power. Therefore, it must refer complaints to appropriate Federal, State, and local agencies.

Many Indian people, because of their lack of confidence in government, are reluctant to take the steps required to file a discrimination complaint. They are often more willing, however, to contact an Indian-operated agency. Mr. Mackey has said, both publicly and privately, that he is "dismayed" about NEOC's delay in processing complaints because the time lapse often prompts Indians to "walk away" from further involvement.[116] One of the Indian commissioners expressed a similar view.[117]

Mr. Mackey said, however, that he was pleased with the cooperation the Indian commission has received from NEOC Director Lawrence Myers and Ken Bordeaux, a Native American employee of NEOC, in expanding services into western Nebraska. Director Mackey said he feels that the Indian commission and NEOC are working together to improve services for Indian clientele.[118]

Accomplishments

The Nebraska Indian Commission includes several programs in its list of priorities, including legal assistance program, emergency medical-dental services, Indian housing authority, Indian education, economic development, and statewide public relations.

To implement these activities, it has been necessary for the director to spend much time trying to mobilize funding resources. The Department of Economic Development, in its program report to the State said:

> *...the Indian commission has been directly involved in procuring about $1,000,000 in total funds and programs a year, in conjunction with the three established Indian reservations, urban organizations, and western Nebraska....*[119]

116. Robert Mackey, interview in Lincoln, Nebr., Feb., 19, 1975 (hereafter cited as Mackey Interview II).

117. Kills-In-Water interview.

118. Mackey interview II.

119. State of Nebraska, Administrative Services, Budget Division, Program Narrative Form 1975-77, Form No. 70-A p. 3.

Indian Bounty Act Repeal

Director Mackey cited the repeal of the Indian Bounty Act as one of the most significant accomplishments of the commission.[120] Since 1943 the State had reimbursed counties $2.50 per day for food expenses for Indian prisoners. According to Mr. Mackey, only Thurston County, the home of the Winnebagos and Omahas, had consistently applied the law. He said this made Indians "quite vulnerable" to white law enforcement officers. During 1970, he said, Thurston County received $26,000 from the State for its Indian prisoners.[121]

Through efforts of the Indian Affairs Commission and the Winnebago Tribe, the 1973 legislature voted passage of LB131, which repealed the Indian Bounty Act. Under the act:

> *In order to equitably distribute the added burden of law enforcement imposed upon certain counties... and the resulting withdrawal of Federal law enforcement in such counties, there shall be paid out of the State treasury...the equivalent of thirty mills on the dollar on the assessed value of all land held in trust by the United States government for the benefit of Indians in any such county to be used for purposes of law enforcement and rehabilitation. Such funds shall be divided as equally as possible between the areas of enforcement and rehabilitation....*[122]

Mr. Mackey said the new act eliminated the "incentive" for Thurston County to imprison Indians, gave the county money for law enforcement activities, and provided $25,000 for an Indian alcoholic treatment program[123] in Thurston County.

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120. Mackey interview I.

121. "Indian Bounty."

122. Revised Statutes of Nebraska, §23-362.

123. State of Nebraska, 83rd Legislature, 2nd session, Legislative Bill 997 (1974).

Indian Legal Services Program

Even before the Indian commission became a statutory unit, development of a statewide legal service program has been given high priority by Indians. There have been numerous incidents, especially in western Nebraska, of alleged discrimination against Indians by law enforcement officials.

For several years the Commission on Indian Affairs sought funds to hire a staff attorney. In 1974 it submitted a proposal to the Nebraska Commission on Law Enforcement and Criminal Justice asking for $21,998.97 in LEAA funds for an Indian legal aid program. In November 1974 the crime commission tabled the proposal, pending receipt of further information. A subcommittee of the crime commission, however, recommended approval of the grant. On December 20, 1974, the crime commission turned down the grant but stipulated it could be resubmitted once certain changes were made. Crime Commissioner James Dunlevy objected to many unsubstantiated allegations in the grant proposal, e.g., Indians have a higher conviction rate than other groups.[124]

The proposal ran into another stumbling block. Joseph S. Golden, social services coordinator for the Office of Planning and Programming, said that it would duplicate services already provided under Legislative Bill 997 of 1974. The bill, Mr. Golden said, "has included funds for an attorney for the Commission on Mexican American and the Commission on Indian Affairs.[125] Nebraska Attorney General Clarence A. H. Meyer disagreed. In November 1974 he wrote to Executive Director Harris R. Owens of the crime commission:

> *Under existing statutes, this office would not have the authority to perform the services contemplated to achieve the 'ultimate goal' set forth in the application received from the Nebraska Indian Commission. In fact, in many cases it is highly possible that existing law would require us to oppose the position taken by the lawyer or lawyers employed on this project. LB997 was an appropriation bill. An appropriation bill cannot change existing law.*[126]

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124. John Gleason, "Indian Legal Aid Grant Denied," Lincoln Journal, Dec. 21, 1974, p. 10.

125. Clarence A. H. Meyer to Harris R. Owens, Nov. 21, 1974. U.S. Commission on Civil Rights, Central States Regional Office files.

126. Ibid.

On February 1, 1975, the grant was approved as amended. Through January 31, 1976, the Commission on Indian Affairs will receive $19,799.07 in Federal LEAA funds and $2,199.90 from the State for a legal services program:

> *...to provide a broad spectrum of legal services for the Nebraska off-reservation Indians who are not now covered by any legal services. This program would be tied to the already existing legal services available on the reservations.*[127]

To achieve this goal, the attorney will:

1. Supervise a statewide Indian Legal Services Program and coordinate the program with existing legal services.

2. Provide a comprehensive legal service program on all levels of court actions, a service which does not now exist.

3. Coordinate the existing legal resources and provide new avenues for total legal counsel for Nebraska Indians involved in criminal cases, utilizing VISTA volunteers, law students, Indian people for all Indians on or off the reservation.

4. Coordinate legal-related programs with all Indian communities of the State of Nebraska, with the primary thrust toward off-reservation Indians who are not now covered with any type of beneficial legal program and to work with law enforcement agencies for better community relationship.

5. Inform and educate Indian communities of the State of Nebraska of their legal rights and also procedures to follow when arrested, to include preventive measures to avoid conflicts with the law.

6. Encourage Indian students to enter careers of law and law enforcement.[128]

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127. State of Nebraska, "Project Proposal for Attorney for Indian Legal Services Program."

128. Ibid.

The commission's interest in law enforcement is understandable. While 1970 census figures show that Indians constitute only 0.7 percent of the State's population, in 1973 they were 4.9 percent of the inmate body at the Nebraska Penal and Correctional Complex and 15.5 percent of the inmate population at the Nebraska State Reformatory for Women.[129]

Mr. Mackey said that negotiations with prison officials and a suit by inmates resulted in some positive changes for Indian inmates, e.g., lifting of restrictions on hair length, allowing Indian arts and crafts and cultural clubs, and permitting visits by medicine men.[130] Commissioner Delores Kills-In-Water said that one of the most important efforts of the commission is to get an Indian person appointed to the Nebraska Parole Board.

Indian Health Care

The accessibility of medical and dental care to Indians living off reservations has long been a concern of Indian leaders. The Indian Health Services of the Department of Health, Education, and Welfare is limited because of a shortage of professionals and funds. Consequently, in 1972 the Indian commission proposed a "Statewide Comprehensive Emergency Health Services Program." The objective of the program is "to incorporate existing medical resources in Nebraska to provide emergency medical-dental service for Nebraska Indians, utilizing trained, local paraprofessional Indian people to deal with problems."[131] To date, the program has not been funded, but Mr. Mackey is trying to obtain church or foundation funds for this purpose.[132]

The Indian commission was able to procure an ambulance for the Presbyterian Church of Nebraska for the Santee-Sioux Indian Tribe and a minibus in Alliance, Nebr. The latter transports Indian people more than 100 miles to Indian health facilities in South Dakota.

129. Nebraska Advisory Committee, U.S. Commission on Civil Rights, Inmate Rights and Institutional Response: The Nebraska State Prison System, (1974), pp. 22-23.

130. Mackey interview II.

131. State of Nebraska, Commission on Indian Affairs, "Proposal for Statewide Comprehensive Emergency Health Services Program in Nebraska."

132. Robert Mackey, telephone interview, Apr. 1, 1975.

IV. NEBRASKA MEXICAN-AMERICAN COMMISSION

Background

In the early 1970s many Mexican Americans in Nebraska felt that Federal, State, and local governments had long neglected them. This feeling was intensified after the creation of the Commission on Indian Affairs, without a counterpart for Mexican Americans.[133]

The six-member Nebraska Mexican-American Commission was formed in 1971 by executive order. Sam Franco of Scottsbluff, a commission member, said:

> *It was felt an executive creation which would only be advisory in nature, would not help meet the needs and solve problems of the Mexican American community in Nebraska. I've seen too many promises made by people but never carried out. I'm not going to be content with that [an advisory unit].*[134]

Governor Exon said he would support the commission's recommendation, and in 1972 former Senator Terry Carpenter of Scottsbluff and Senator Eugene T. Mahoney of Omaha introduced Legislative

133. Stan Porras, interview in Lincoln, Nebr., Oct. 22, 1974 (hereafter cited as Porras interview).

134. United Press International, "Commission Will Seek Statutory Unit Status," Lincoln Star, Dec. 11, 1971.

Bill 1081 to create a Mexican American commission. The measure was passed by a unanimous vote of the Senate, approved by the Governor, and on April 5, 1972, the Mexican-American Commission became a statutory entity. The establishment of the commission was subsequently praised:

> *As the realization of an idea which many leaders of the State had nurtured for many years, the Commission marked a new era for the Mexican-American community. The purpose of this Commission was to explore problems faced by the Mexican American residents, and based on its findings, to propose to State government visible solutions. The Legislature would thus be enabled to better understand the needs of Spanish-speaking, and to take action to alleviate these needs.*[135]

The commission's first office was established in Lincoln, and in July 1974 the western field office was established in Scottsbluff in conjunction with the Commission on Indian Affairs. Stan Porras, executive director, considers the field office to be a major accomplishment of the commission.[136]

Commission

The commission consists of nine persons appointed by the Governor and a representative of the Governor serves as an ex-officio voting member; there is no executive board. Appointments are for 3 years and are staggered so that one-third of the commission is renewed each year.

The original legislation stated that commission members "receive $25.00 per day for work performed as a part of their official duties," and "receive reimbursement for actual and necessary expenses on the same basis and subject to the same conditions as full-time State employees."[137] LB506 of 1974 raised the per diem compensation to $35.00.[138] State law requires the commission to meet a least quarterly. Additional meetings are subject to the call of the director. A quorum of five members is required.[139]

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135. State of Nebraska, Mexican-American Commission, "Annual Report of the Executive Director for Fiscal Year 1972-1973," (1973)," p. 2 (herein cited as "Annual Report").

136. Porras interview.

137. Revised Statutes of Nebraska, §81-8.267

138. Ibid.

139. Ibid.

In March 1975 all nine commissioners were Mexican American, and the Governor's representative was an anglo male. In all, there were nine males and one female.

On January 19, 1974, the commissioners approved a proposal to divide the State into districts for purposes of commission representation. The districts would be established on the basis of Mexican American population, and one commissioner would serve from each district. Each commissioner would have a citizens advisory committee. In April 1975 Director Porras was attempting to have such a bill introduced in the State Legislature.[140]

Commissioner Jesse Quijas from Scottsbluff said he feels that the number of commissioners should be increased by 4 to 13 to enlarge representation from western Nebraska.[141] This would also help to insure a quorum at all meetings, he said.

Joe Renteria, coordinator of minority affairs at the Lincoln campus of the University of Nebraska, told Advisory Committee staff that commissioners should be appointed by the community rather than by the Governor.[142] Lupana Flores, executive secretary of the Chicano Awareness Center in Omaha, suggested that the Governor submit a list of potential commissioners to community groups for approval of disapproval.[143] On the other hand, Commissioner Ygnacio Valdez from Grand Island said that he has no complaint about the selection method for commissioners. He told staff interviewers that present rules permit community groups to submit names of potential commissioners to the Governor.[144]

Staff

Commissioners have the power to hire the director, and in June 1972 chose Stan Porras as the agency's first director. His duties as defined by law are:

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140. Stan Porras, telephone interview, Apr. 2, 1975 (hereafter cited as Porras telephone interview).

141. Jesse Quijas, interview in Grand Island, Nebr., Nov. 20, 1974 (hereafter cited as Quijas interview).

142. Joe Renteria, interview in Lincoln, Nebr., Oct. 22, 1974.

143. Lupana Flores, interview in Omaha, Nebr., Oct. 11, 1974.

144. Ygnacio Valdez, interview in Grand Island, Nebr., Nov. 11, 1974 (hereafter cited as Valdez interview).

Serving the commission by gathering information, disseminating findings of fact and other information, forwarding proposals and evaluations to the Governor, the legislature, and various State agencies, carrying out the public education programs, conducting hearings and conferences, and performing other duties necessary for the proper operation of the commission.[145]

The director is responsible for staff hiring through State personnel prccedures. As of October 1974 the agency employed two Mexican American men as field representatives, one in Lincoln, the other in Scottsbluff, and two secretaries, one in each office. Both secretaries are female, one anglo, one Mexican American.

According to Director Porras, the commission is understaffed, and he feels a need for a full-time attorney to develop hearings, propose changes in laws, and recommend possible litigation.[146]

Budget

Table 4.1 below indicates commission budget requests and actual authorizations.

Table 4.1

Mexican American Commission Budget

	FY 1973	FY 1974	FY 1975	FY 1976
Agency Request	—	$34,535	$85,121	$93,782
Actual Authorization	$29,682*	48,910	50,680	**

*Authorized by LB1081.
**Unknown at this writing.

Source: Nebraska Mexican American Commission

145. Revised Statutes of Nebraska, §81-8.269.

146. Porras interview.

The 60.7 percent budget increase from FY 1973 to FY 1974 enabled the Mexican-American Commission to increase staff and to begin operating its western field office. However, Director Porras told Advisory Committee staff that he feels that with its present budget, the agency cannot do all it should for Mexican Americans.[147]

Functions

The Mexican-American Commission has been directed by the legislature to serve a multi-faceted role:

1. Gather and disseminate information and conduct hearings, conferences, and special studies on problems and programs concerning Mexican Americans;

2. Coordinate, assist, and cooperate with the efforts of State departments and agencies to serve the needs of Mexican Americans especially in the fields of education, employment, health, housing, welfare, and recreation;

3. Develop, coordinate, and assist other public and private organizations which serve Mexican Americans;

4. Propose new programs concerning Mexican Americans;

5. Evaluate existing programs and proposed legislation concerning Mexican Americans;

6. Stimulate public awareness of the problems of Mexican Americans by conducting a program of public education and encourage the Governor and the legislature to develop programs to deal with these problems; and

7. Conduct training programs for community leadership and service project staff.[148]

Like the Indian Affairs Commission, the Mexican-American Commission has the power to establish advisory committees on special subjects, to solicit and accept gifts and grants, and to contract with public and private groups to conduct its business.

147. Ibid.

148. Revised Statutes of Nebraska, §8.265.

Director Porras sees the Mexican-American Commission serving as an ombudsman for Nebraska's Mexican Americans--to raise living standards and to provide additional opportunities. The commissioners, he feels, "...are the eyes and ears of the State in determining the needs and concerns of the Mexican American people....They should be the voice of the Mexican American people to the State and...should initiate whatever action seems to be needed to help solve a problem."[149]

Interviews with Commissioners B. N. Garcia, Jesse Quijas, and Ygnacio Valdez disclosed a general consensus on the commission's priorities. They see the agency's main function as gathering information on the needs of Mexican Americans and relaying this to the staff and Governor, formulating policy statements, and holding hearings on demonstrated problems.[150]

The commission does not have enforcement power, i.e., it cannot resolve complaints. Mr. Porras would like the commission's mandate expanded to include this, along with subpoena power.[151] Under State civil rights laws, NEOC has primary jurisdiction in this area. Mr. Porras said that he prefers not to refer complainants to NEOC because of its complaint backlog. "Much Mexican-American Commission time and work has gone into settling disputes between individuals and agencies," he told Advisory Committee staff.[152] When it appears that a complaint can be settled informally, Director Porras will negotiate personally with the parties.

Isable Ramirez, field representative in Scottsbluff, does not share Mr. Porras' negative view of NEOC. In fact, he has referred complainants to the State agency.[153]

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149. Stan Porras to Etta Lou Wilkinson, Aug. 13, 1974, U.S. Commission on Civil Rights, Central States Regional Office files.

150. B. N. Garcia, interview in Lincoln, Nebr., Oct. 23, 1974 (hereafter cited as Garcia interview). Valdez interview. Quijas interview.

151. Porras interview.

152. Ibid.

153. Isabel Ramirez, interview in Scottsbluff, Nebr., Nov. 9, 1974.

The director has been critized by some young Mexican Americans who feel the commission lacks effectiveness. Commission chairman B. N. Garcia believes the situation dates back to the days when the director was the only staff member and commission activities were too great for one person to handle. He believes, however, that the increase in staff and the establishment of a western field office have increased the agency's effectiveness and hence its credibility in the community.[154]

Mr. Garcia also said the problem can be attributed to a misunderstanding of the commission's role by members of the community. He told Advisory Committee staff that more needs to be done to inform the community of what the commission can and cannot do. Mr. Porras concurred and said the proposal to increase the commission's membership would go far to meet that need.[155]

Accomplishments

According to Mr. Porras, the creation of the Mexican-American Commission was an accomplishment in itself. He feels that the commission has been able to establish a new cultural awareness among Nebraska's Mexican American citizens.[156]

Education is the number one priority for the commission. In the past, the commission has developed statistical data of Spanish background students and employees in schools and colleges throughout the State.[157] The largest aggregate number of Spanish background public school students (1,126) is in the Omaha School District (January 1975).[158] The highest concentration of Spanish background students is in Scottsbluff, where they constitute nearly 20 percent of the public school population.

154. Garcia interview.

155. Porras interview.

156. Ibid.

157. "Annual Report."

158. Mary Kay Quinlan, "State Prodded on Bilingual Aid," Omaha World Herald, Jan. 23, 1975.

As of April 1975, the commission had sent questionnaires to school districts in the State asking for their current Mexican American student enrollment. Director Porras said there has been a very poor response. Many school districts indicated that it was illegal for the commission to collect these figures.[159] The commission has posed this issue to the State attorney general and as of May 1975, was awaiting an opinion.

Mr. Porras is also distributing a proposed draft of bilingual/bicultural legislation for comment. After he receives enrollment figures and comments on the legislation, Mr. Porras plans to press for introduction of a bilingual/bicultural education bill during the next legislative session.[160]

According to the commission:

> *The overall picture is serious from pre-school to institutions of higher education. There is a need for the planning, development, and implementation of programs to recruit bilingual and bicultural students who would become bilingual teachers. The need for a full comprehensive study of the educational problems faced by the Mexican American community in Nebraska is obvious.*
>
> *The commission is aware that one of the most pressing educational problems is the dropping-out of Mexican American students....*
>
> *Some people believe that the percentage is between 55 percent and 60 percent (the percentages are an educated guess). Though everybody recognized the problem, nobody seems to be doing anything about it. The Spanish-speaking communities can no longer afford to lose those youngsters who are being "pushed out" of the educational institutions.*
>
> *Of the few students who complete high school, too few of them go to institutions of higher learning. The doors of the colleges and universities have remained somewhat closed. There seems to be a lack of relevant programs which would meet the needs of the Mexican American college student.*[161]

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159. Porras telephone interview.

160. Ibid.

161. "Annual Report."

In May 1974 the commission held a hearing in Lyman, a small town on the Wyoming border, to investigate alleged discriminatory treatment of Spanish speaking background students. A subsequent report recommended that more Spanish background individuals be hired as teachers.

On August 7, 1974, Mr. Porras announced that the Mexican-American Commission was investigating allegations of employment discrimination by State agencies. The commission received complaints from State employees, former employees, and job applicants concerning six State agencies receiving Federal funds. Mr. Porras said:

> *I'd rather not say right now which agencies they are. It might cause them to go out and hire anybody just to shut people up. I don't want that; I want them to hire somebody who can do the job.*[162]

On February 6, 1975, the Mexican-American Commission arranged a meeting with the State personnel department, the program and planning department, the Equal Opportunity Commission, the Commission on Indian Affairs, and the Commission on the Status of Women to discuss the allegations and a proposed affirmative action plan for the State, which Mr. Porras introduced. Mr. Porras told Advisory Committee staff that he was "disappointed" with NEOC's response to his proposal.[163]

Some of the Mexican-American Commission's other accomplishments include:

1. Having the height requirement lowered for highway patrolman jobs;

2. Increasing the number of Mexican Americans employed by State government agencies and universities;

3. Translating the State drivers' manual into Spanish;

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162. Bob Guenther, "State Agencies Biased--Porras," Lincoln Star, Aug. 7, 1974.

163. Porras telephone interview.

4. Administering, through the Colorado Migrant Council, an Emergency Food and Medical Services Program for migrant and seasonal farmers (Mr. Porras would like the commission mandate expanded to cover discrimination against migrants); and

5. Circulating a newsletter to acquaint Mexican Americans with the commission's work.164

164. Porras interview.

V. NEBRASKA COMMISSION ON THE STATUS OF WOMEN (CSW)

Background

In 1961 President John F. Kennedy created the President's Commission on the Status of Women. Four years later Nebraska became the 16th State to establish a Governor's Commission on the Status of Women.[165] It was not until April 7, 1971, however, with the passage of LB819 by the Nebraska legislature, that the commission became a statutory entity. A 1975 bill[166] changed the commission's name to the Nebraska Commission on the Status of Women.

By law, the "purpose of the commission shall be to emphasize studying the changing and developing roles of women in American society including:

1. Recognition of socioeconomic factors that influence the status of women;

2. Development of individual potential;

3. Encouragement of women to utilize their capabilities and assume leadership roles;

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165. State of Nebraska, Governor's Commission on the Status of Women, Annual Report, (1973), p. 1 (hereafter cited as Annual Report).

166. State of Nebraska, 84th Legislature, First Session, Legislative Bill 251 (1975), Section 1 (hereafter referred to as Legislative Bill 251).

4. Coordination of efforts of numerous women's organizations interested in the welfare of women;

5. Identification and recognition of contributions made by Nebraska women to the community, State, and Nation;

6. Implementation of the foregoing subdivision where improved working conditions, financial security, and legal status of both sexes are involved; and

7. Promotion of legislation to improve any situation in which implementation of [the above] indicates a need for change.[167]

Jean O'Hara, executive director of the Nebraska Commission on the Status of Women, has said, "The commission is a mainstream effort for women and the serious problems they face. This is by no means radical."[168]

Staff

Although the commission dates back to 1965, paid staff was not hired until 1974. On October 1 of that year, Ms. O'Hara assumed her duties as the commission's first executive director and a clerk/stenographer was hired. Before this time the commission had relied upon the Governor's office for clerical help.

Commission

In 1965 Governor Morrison appointed 35 persons--both men and women--to the first commission. When the 1971 statute was passed, commission membership was set at not more than 40 persons, one to be a member of the Governor's staff. Commission members were selected by the Governor "...on a nonpartisan basis from the six Supreme Court districts as they existed on January 1, 1971." One-third were to be appointed to 1-year terms, one-third to 2-year terms, and one-third to 3-year terms. Later Commissioners were selected for 3-year terms, not to exceed two consecutive terms.

167. State of Nebraska, 82nd Legislature, First Session, Legislative Bill 819 (1971), Section 6.

168. "Status Agency Chief: Women Last Untapped Resource," Omaha World Herald, Oct. 6, 1974, p. 16-B (hereafter referred to as "Status Agency Chief").

Commission members serve without compensation, except for expenses incurred when attending commission meetings. By statute, regular meetings are to be held three times a year--winter, spring, and fall, but the commission feels this is inadequate and schedules four. Commissioners elect a chairperson, vice-chairperson, secretary, and treasurer to serve on the executive committee. The commission's enabling legislation establishes six standing committees--communications and public relations; education and counseling; employment and income security; finance; home and community; and women under the law. Chairpersons of each committee, along with the executive committee, constitute the board of directors.

Several persons interviewed by the Advisory Committee indicated that in reality appointments to the commission are not nonpartisan and regardless of which administration governed, the CSW is an extension of the Governor's political machinery.[169] Commission chairperson Ethel Kirwin said that many appointments are "thank you's" for past political favors.[170] This factor may have weighed heavily in the 1975 legislature's decision to reduce commission membership to 30, only half of whom may belong to the same political party.[171]

As of March 1975 the commission consisted of 2 men and 29 women; only one person belonged to a minority group, a black women.[172] A Mexican American from Scottsbluff served on the commission from 1972 to 1973, but when she resigned, the vacancy was filled by a white. Ms. Kirwin said she felt that she was remiss in not recommending that

169. Donald Walton, political editor, Lincoln Star, interview in Lincoln, Nebr., Oct. 24, 1974; Dick Herman, editorial manager, Lincoln Journal, interview in Lincoln, Nebr., Oct. 24, 1974.

170. Ethel Kirwin, interview in Scottsbluff, Nebr., Nov. 19, 1974 (hereafter cited as Kirwin interview). In response to a draft of this report submitted for CSW comment, Ms. Kirwin wrote the Advisory Committee that this remark was "out of context." "Attendance by some members of the commission was not good," she said, "because they were not particularly dedicated but were Governor's appointees. (May 1975).

171. Legislative Bill 251.

172. Jean O'Hara, interview in Lincoln, Nebr., Oct. 24, 1974 (hereafter cited as O'Hara interview).

the Governor appoint another Mexican American and a Native American to the commission.[173]

In October 1974 Ms. O'Hara told the Advisory Committee that the commission had not dealt specifically with the problems of minority and low-income women. However, she said, frequently minority women prefer to work toward their goals through separate structures, such as the National Council of Negro Women and the National Black Feminist Organization.[174] Ms. Kerwin conjectured that perhaps low-income women would be better served by an organization similar to a commission on human resources. The concerns of middle-class women, such as their exclusion from municipal golf courses during certain hours, would appear frivolous to these women, she said.[175]

In an April 29, 1975, letter to the Advisory Committee, Ms. O'Hara wrote, "I do feel we have begun to establish programs for the low-income women. I think this is a definite priority area of our commission. We try to represent all women and carry on programming beneficial to them."[176]

The commission has worked with other organizations to support two welfare bills before the State legislature. One would raise welfare levels; the other would allow the Nebraska Welfare Department, instead of the State legislature, to set assistance rates. In a letter to State senators, the commission indicated that "ADC mothers and their children are receiving 80 percent of...[their] subsistence level standard of need."

The commission has also opposed the Department of Public Welfare's decision to decrease the amount of money paid welfare mothers for childcare services. A public hearing on the matter received such wide citizen opposition that the welfare department issued a revised fee schedule that does not jeopardize childcare.[177]

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173. Kirwin interview. In response to a draft report submitted for CSW comment, Ms. Kirwin wrote the Advisory Committee that "remiss is not a good word in that it implies some negligence on my part when in fact I did not know a qualified woman from either the Mexican or Indian group. I now know a couple of good Mexican women--one is on the local [Scottsbluff] Mayor's commission at my suggestion."

174. O'Hara interview.

175. Kirwin interview.

176. Jean O'Hara to John Gale, Apr. 29, 1975, U.S. Commission on Civil Rights, Central States Regional Office files (hereafter referred to as O'Hara letter).

177. Ibid.

Budget

Commission chairperson Ethel Kirwin told the Advisory Committee that the commission has always been plagued by a shortage of money. For fiscal year 1973 the commission's budget was only $4,648. This increased to $23,019 for fiscal year 1975. According to Ms. Kirwin, the increment enabled the commission to hire the executive director and clerk/stenographer.

Activities

The objectives of the commission, as stated in its by-laws, are to "stress the needs for the development of potentials, interests, and talents of Nebraska citizens," and to "encourage the utilization of capable individuals in roles of leadership."[178]

A major portion of the commission's activities has been devoted to affecting State legislation. "As a State agency, the commission can't lobby but it can present information to committees," Ms. O'Hara said.[179]

In 1965 the commission supported LB787, the Equal Pay for Equal Work bill. It died in the Labor Committee. The same year, the Nebraska Fair Employment Practice Act, also supported by the commission, was passed. The commission also favored LB474 of 1967 and LB501 of 1969, both of which prohibited wage discrimination because of sex.

A commission survey taken in the mid-1960s identified 26 Nebraska counties in which women were prohibited from serving on juries. By 1967 this figure was reduced to 11. During the 1967 legislative session, the commission promoted LB836 and LB837, which ended sex discrimination in the selection of jurors. The former bill stated that "...the names of women shall thereby be included and used in making up all jury lists for such county in the same manner as men."[180] The commission developed LB411 for the legislature in 1969. This bill, which repealed the "protective employment" laws for women, was passed during the same session.

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178. Annual Report, p. 2.

179. "Status Agency Chief."

180. State of Nebraska, 78th Legislature, Regular Session, Legislative Bill 836 (1967).

In 1972 the commission was influential in the legislature's early vote ratifying the Equal Rights Amendment (ERA). Nebraska was the second State to take such option. Unfortunately, commission efforts had no impact on legislative action in 1973, when Nebraska became the first State to rescind ratification of the ERA.

During the 1974 session the commission was supportive of Senator Steve Fowler's study resolution 180 regarding sex discrimination in the granting of credit. The resolution was referred to the Banking, Commerce, and Insurance Committee, which held hearings on the matter. As of May 1975, legislation had not been proposed as a result of the hearings.

The commission has also supported possible legislative action regarding rape, inheritance laws, and day care centers. As of May 1975, CSW had not taken a stand on abortion.

The commission is currently preparing a booklet describing Nebraska laws pertaining to women. Commission chairperson Kirwin feels that such an endeavor is useful, especially for low-income women, who are particularly vulnerable in business transactions.

In 1967 the commission sponsored a statewide conference on "Women and Men - Partners in Progress." Two years later a second conference was held, "Womenpower--Women in Service."

Commission members felt they were influential in the appointment of Elizabeth Pittman, a black woman and former vice-chairperson of the commission, as a municipal court judge in Omaha in 1971.

In 1973 the commission established a "Talent Bank," containing the names of women who qualified for appointment to State commissions and councils. These names are suggested to the Governor.

The commission published and widely distributed a book called "Nebraska Women Through the Years," a history of the accomplishments of Nebraska women from 1867 to 1967.

In 1972 the commission decided to work toward the development of commissions on the status of women in the larger Nebraska cities (Omaha already had one). Subsequently, the mayors of Columbus and Scottsbluff have appointed women's commissions. Chairperson Kirwin said she feels that it might be more useful to have women's resource centers established around the State.[181]

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181. Kirwin interview.

The commission has been the initiator and sponsor of a coalition of Nebraska organizations planning activities for International Women's Year 1975. Farm and labor organizations, minority and low-income groups, women's rights groups, international groups, and religious groups are all participating.[182]

182. O'Hara letter.

VI. COMMISSION ON HUMAN RIGHTS OF THE CITY OF GRAND ISLAND

Background

During the late 1960s minorities in Grand Island called the city's attention to discrimination they faced in housing and employment. As a result, in 1967 a "Community Development Action Council" was created--a citizen's advisory committee on minority concerns.[183] The Action Council's dialogue with the city council led to passage of Ordinance No. 4904 on December 14, 1970, creating the Commission on Human Rights of the City of Grand Island.

By ordinance, the commission serves:

> (a) To insure that there shall be no discrimination in the acquisition, ownership, possession, or enjoyment of housing....
>
> (b) To insure that all persons within the city of Grand Island shall be entitled to a full and equal enjoyment of the accommodations, advantages, facilities, and privileges of...[public accommodations]
>
> (c) To foster, encourage, and promote mutual respect and understanding among all individuals in the city; to promote and encourage respect for law and order; and to discourage unlawful conduct and violence in the attainment of the goals of equality in civil rights, and housing opportunities in the city.[184]

183. William Ross, administrative assistant to the city manager of Grand Island, interview in Grand Island, Nebr., Nov. 21, 1974 (hereafter cited as Ross interview).

184. City of Grand Island, City Code, §37-2(a)(b)(c).

In 1972 the ordinance was amended to include employment discrimination based upon race, color, religion, sex, or national origin.

Commission

The mayor appoints all nine commission members to 3-year terms, subject to city council approval. No commissioner may serve more than two successive terms.[185] Commission members serve without compensation. As of November 1974 there was one vacancy and commission members were preparing a panel of names from which the mayor might fill the vacancy. The vacancy was later filled by a white male.[186] The eight-member commission was evenly divided among males and females and among whites and minorities. Minority membership consisted of two black females, one black male, and one Mexican American male.

Staff

The only staff member to the commission is William Ross, administrative assistant to the city manager of Grand Island, who devotes only a small part of his time to the commission. In Mr. Ross' opinion, the small complaint load received by the commission does not justify a full-time staff person. He said, however, that it would add to the effectiveness of the commission to have a staff person with fewer responsibilities in city government than he has. Mr. Ross also said he felt the staff person should have more training in equal opportunity and the law than he has. In his view, however, it would not be feasible for a city having a labor force of 325 to afford a staffed commission on human rights.[187]

Functions

As Table 6.1 indicates, there have been few discrimination complaints brought to the commission's attention.

185. Ibid., §37-1.

186. Secretary to the mayor of Grand Island, telephone interview, Apr. 21, 1975.

187. Ross interview.

Table 6.1

Complaints Received By
Commission on Human Rights of the City of Grand Island

	FY 1972	FY 1973	FY 1974
Housing	2	1	0
Public Accommodations	1	0	0
Employment	0	3	3
TOTAL	3	4	3

Fiscal year, August 1-July 31

Source: Commission on Human Rights of the City of Grand Island

Mr. Ross told Advisory Committee staff that other complaints were filed during these years, but these were settled without having to be presented to the commissioners. He attributed the low number of employment complaints to the almost "zero unemployment" in Grand Island. The commission has not received any complaints from minorities regarding discrimination in the granting of promotions, he said.[188]

In regard to disposition of complaints, the commission's duties are fixed by law. It investigates complaints to determine probable cause and has subpoena power through the city manager's office, subject to his veto. As of May 1975, this power had not been exercised. In cases of probable cause, the commission tries for voluntary compliance from the respondent. If this is not forthcoming, the commission, with the city attorney as counsel, may bring suit in the Hall County district court. This must be done within 30 days.[189]

In 1973 the commission received a discrimination complaint against the city government. Because it does not have jurisdiction over complaints in which city government is the respondent, the complaint was referred to the Nebraska Equal Opportunity Commission. Ygnacio Valdez, commission member of the Grand Island agency and also a member of the Nebraska Mexican-American Commission, said that the State agency's backlog is discouraging to complainants. One of NEOC's problems, he said, is the lack of a staff attorney, and having to rely upon the State attorney general's office for legal assistance greatly contributes to the commission's backlog.[190]

188. Ibid.

189. City of Grand Island, City Code, §37-14.

190. Ygnacio Valdez, interview in Grand Island, Nebr., Nov. 20, 1974.

Accomplishments and Problems

The Commission on Human Rights of Grand Island views itself as a "young organization." Commissioners feel that the agency's major accomplishment is the mere fact that it gives Grand Island citizens a place to bring their problems where previously there was none.

However, the commissioners described several problems. First, more needs to be done "to get the word out" in the community about the commission. Although brochures have been distributed, posters displayed, and public service radio spots aired (in both English and Spanish), commission members are concerned that the low number of complaints filed might reflect an inadequate job of reaching the public. They see a need to intensify their public relations activities, perhaps with a television appearance and a survey of local businesses to determine the number of minorities and women employed and at what job levels.[191] Ethel Daniels, one of the minority commissioners, believes there is a need for commission appearances before a variety of community organizations to heighten their awareness of minority problems. This is difficult for the commissioners because most hold full-time jobs, in addition to their commission activities, making them unavailable during the day.[192]

Another problem cited by the commissioners is the low priority given the commission by city government. Commissioners see the need for a full-time investigator[193] and for more training for themselves in the collection and evaluation of evidence. On occasion, they have met with equal opportunity specialists from NEOC for this purpose.

The fact that the commission does not have power to initiate complaints inhibits the redress of discrimination. For example, Commissioners Daniels and Valdez expressed concern about the low number of minorities employed by city government. Ygnacio Valdez said in an interview in Grand Island, Nebr., on Nov. 20, 1974, that the city employs only six Chicanos--two police officers, a bookkeeper, a metermaid, a water department supervisor, and an employee of the

191. Joe Watkins, Larry Long, June Carroll, Ygnacio Valdez, Sally Collier, Maxine Anderson, and Ethel Daniels, interview in Grand Island, Nebr., Nov. 20, 1974 (hereafter cited as Commission interview).

192. Ethel Daniels, interview in Grand Island, Nebr., Nov. 20, 1974.

193. Commission interview.

welfare department. Mr. Ross told Advisory Committee staff in an April 18, 1975, letter: "The last job audit showed 13 minority group member employees out of a total of 325 employees. This is 4 percent of the work force. The U.S. Census lists Mexican Americans as the only significant minority group in Grand Island with a Mexican American population of 2.5 percent of the total population." He also said, "The City of Grand Island has an approved affirmative action program and is moving to implement that program."[194]

Some commissioners were dismayed that the commission lacked jurisdiction over age discrimination. Radio announcements by a local beauty school stated that applicants must be under 50 years old. Others felt that the commission make-up lacked representatives of the "community power structure."[195]

194. William Ross to Nebraska Advisory Committee, Apr. 18, 1975.

195. Commission interview.

VII. LINCOLN COMMISSION ON HUMAN RIGHTS

Background

Discrimination faced by minorities living in Lincoln first gained public attention during World War II with the housing problems encountered by minority military families stationed in the area. According to one Lincoln resident, there was only a gradual awakening on the part of city government and the majority community to discrimination in areas other than housing--employment, police, public accommodations. Many residents reportedly dismissed such problems as the work of "outsiders" who were coming into the community rather than legitimate concerns of Lincoln's minority citizens.

In 1952 Mayor Victor Anderson formed the Mayor's Council on Human Relations. This was reactivated in April 1958 by Mayor Bennett Martin following an arson fire of a home occupied by a black family. In September 1959 the Human Relations Council submitted Lincoln's first minority housing report to the city counci. Following this, the Council on Human Relations became inactive. In 1963, the Lincoln Action Coordinating Team (ACT), a citizen group dedicated to equal access to housing, urged Mayor Dean Peterson to reactivate it.[196]

In 1966 the city charter was amended and the Mayor's Commission on Human Rights was established as part of the City Planning Department.[197]

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196. Leo Scherer, "Human Relations Council Head Sought by Peterson," Lincoln Evening Journal and Nebraska State Journal, Aug. 30, 1963, p. 10.

197. Gerald Henderson, letter to U.S. Commission on Civil Rights, Central States Regional Office files, August 1974.

An 11-member panel was created at the time, but it received little publicity until 1968 when the passage of ordinance 9768 established a staff position for the commission. This shifted the commission's leadership from the mayor to a human rights officer. Gerald Henderson was appointed the commission's executive director that same year. The ordinance also reduced the commission's membership to nine and empowered the commission to: receive, investigate, and conciliate complaints pertaining to discrimination because of race, color, religion, sex or national origin.[198]

The council can also request the attendance and testimony of witnesses and ask the city council to use its subpoena powers on its behalf. However, the commission was given no enforcement power.

According to Director Henderson, the Nebraska Supreme Court ruled in the 1963 case of Midwest Employers Council v. City of Omaha[199] that local governments could not enact civil rights ordinances until the State itself passed a civil rights law. A 1974 State law allows municipalities to pass civil rights laws more restrictive than those of the State.

On October 1, 1973, the Lincoln City Council strengthened the powers of the commission through city ordinance 10917. The amended ordinance stated that the Lincoln Commission on Human Rights is "to foster equal opportunity to all persons in the city regardless of their race, color, religion, sex, disability, national origin, age, marital status, or the fact that they are receiving public assistance."[200] The commission has responsibilities to enforce equal opportunity ordinances prohibiting discrimination in the areas of public accommodations, housing, and employment.

Commission

The mayor appoints the nine members of the commission to 3-year terms. Confirmation by majority vote of the city council is required. Members may be reappointed for a second term. At the time of the Advisory Committee's study, the commission consisted of seven males and two females, one of whom was a minority.

198. City of Lincoln, Ordinance 9768 (1968).

199. 177 Nebraska 877, 131 N.W.2d 600 (1963).

200. City of Lincoln, Ordinance 10917 (1973).

According to Director Henderson, the commission has several areas of responsibilities: 1) monitoring the city's affirmative action program; 2) conducting public meetings and hearings; and 3) educating the public as to commission activities and general civil rights concerns. Mr. Henderson said he encourages broad involvement from the commissioners, including participation in conciliation conferences and public relations activities, e.g., speaking engagements and service on city task forces and committees.

The fairly recent status of the commission as a quasi-judicial body appears to have focused the commissioners' attention upon the dichotomous functions of law enforcement and education of the public.

Commissioners appear to have different ideas regarding the extent to which the commission should act as a law enforcement agency. One issue relates to awarding damages and compelling payment. Under the current ordinance, the commission cannot award punitive damages. Some commissioners said the commission would be more effective if the ordinance were amended to provide for this.

Commissioner Harry Allen said he thinks the commission needs to develop a community-based advocacy effort with more emphasis on community activities, such as seminars with employers and meetings with the minority community. He also told the Advisory Committee that the commission has not had much direct contact with Lincoln's minority community.[201]

Staff

As of March 1975, the commission had a staff of five including three professionals and two secretaries. The professional staff consisted of one black male, one white male, and one white female; and the clerical staff was composed of two white females. The mayor and the commissioners select the director, who hires other staff. In addition to the director, professional staff consists of a field investigator, who was hired in 1974 as the result of an increase in the budget appropriation and a housing specialist, who coordinates the location of individuals and families displaced by housing code administration.

According to city law, the director is responsible for administering and enforcing all provisions of chapter 11 of the Lincoln Municipal Code—"to work to remove inequalities which pertain to minority group status on such problems as housing, recreation, education, employment, law enforcement, vocational guidance, and related matters.[202]

201. Harry Allen, interview in Lincoln, Nebr., Oct. 23, 1974.

202. City of Lincoln, Municipal Code, §11.02.020.

By ordinance, the director is also required to report contacts with community groups to the commission and to implement the commission's decisions.

Director Henderson told the Advisory Committee he felt that staff size has not increased sufficiently to properly carry out the commission's mandate.[203] It has increased enough, however, to merit departmental status and to require larger quarters. The office is now situated outside of the city hall. Mayor Sam Schwartzkopf indicated that the new location limited contact between commission members and elected officials.[204]

Budget

For the fiscal year beginning September 1, 1974, the Human Rights Commission received an appropriation of $55,378.00. This approximates the amount requested by the agency. Budget appropriations for the commission during 1972-1973 and 1973-1974 were $24,219 and $41,208, respectively. During the 3-year period beginning September 1, 1972, and ending August 31, 1975, the commission budget increased by 29 percent. The broadening of departmental responsibilities, such as monitoring the affirmative action program, and the expansion of protected classes justified the budget growth.

Functions

According to Director Henderson, the city's equal opportunity law is comprehensive and allows the commission to take effective action against violators. The law does not provide the commission with initiatory powers.

A commission staff member suggested that the housing law would be strengthened if it included protections against discrimination on the basis of marital status and receipt of public assistance as do the equal accommodations and fair employment sections of the municipal code. Interracial families and female heads of household in one-parent families are frequent victims of housing discrimination. They are not currently included as protected classes. The housing ordinance prescribes that within 30 days after receipt, a discrimination complaint must be investigated and determination made as to whether probable cause exists. This period is sometimes unrealistic

203. Gerald Henderson, interview in Lincoln, Nebr., Oct. 22, 1974 (hereafter cited as Henderson interview).

204. Sam Schwartzkopf, interview in Lincoln, Nebr., Oct. 22, 1974 (hereafter referred to as Schwartzkopf interview).

because the agency may encounter obstacles such uncooperative respondents. A staff investigator, however, felt that this is a safeguard for the complainant against "foot dragging" by the commission.

The Complaint Process

Procedures used by the Lincoln Human Rights Commission to process individual discrimination complaints are more or less consistent with investigatory steps used generally by civil rights agencies. For a complainant to receive maximum attention, it is agency policy to encourage the person to file with all agencies having jurisdiction.

The Lincoln Commission on Human Rights and the NEOC have a memorandum of understanding which sets forth the handling of complaints for which both agencies have jurisdiction. If the NEOC receives complaints from Lincoln, they are referred to the Lincoln Commission. The latter agency investigates and has 60 days in which to attempt to resolve the complaint. The Lincoln Commission is to notify the NEOC of a case's disposition within 10 days after a decision. NEOC reviews the finding of the Lincoln Commission and can either "accept, reject, or cause to be initiated a complete investigation."[205]

Both the Lincoln housing and fair employment practice ordinances, which state that complaints shall be filed within 180 days after the alleged discriminatory practice occurred, are consistent with Federal and State law. The public accommodations section of Lincoln's law provides a limitation for filing within 10 days after the alleged discrimination act. This is also true of the Nebraska Civil Rights Act.

After receipt of a complaint, the Lincoln Commission begins an investigation to determine either "no cause" or "probable cause." If the investigation indicates probable cause, commission staff attempts to eliminate the unlawful practice through informal conciliation with the two parties. The complainant is asked which remedy would be satisfactory, and the respondent is asked to agree to the terms.[206] One case that the commission resolved through this method involved a person who was paying $65.00 per month rent for an apartment. This person saw the same apartment advertised for $55.00 per month. The respondent agreed to repay the complainant the $10 rental discrepancy for each month overpaid.

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205. "Memorandum of Understanding Between the City of Lincoln Commission on Human Rights and the Nebraska Equal Opportunity Commission," July 18, 1974.

206. City of Lincoln, Ordinance 10917(1973).

If informal methods fail, the case goes to public hearing before the commission (with at least one commissioner present). In upholding a probable cause determination, the commission may issue cease and desist orders or order affirmative action by the respondent, including hiring or reinstatement of employees with or without back pay.[207]

Commission decisions may be appealed to the district court within 30 days. If either party is not adhering to the terms of the decision after that period of time, under the 1973 ordinance the city attorney can file a complaint in a municipal court to enforce the commission's order.[208]

Table 7.1 indicates the number of complaints received by the Lincoln Commission on Human Rights during fiscal years 1973 and 1974. The city's fiscal year extends from September 1 through August 31. During fiscal year 1973, 95.7 percent (89) of all cases received were disposed of, while this was true for only 11.5 percent (three) cases during fiscal year 1974. Director Henderson said the hiring of a field investigator in 1974 has increased the number of complaints disposed of by the agency during that year. The agency averages 3 to 4 months to handle a complaint.

Table 7.1

Complaints Received by Lincoln Commission on Human Rights

	FY 1973	FY 1974
Employment	14 (15.1%)	15 (57.7%)
Housing	78 (83.8%)	8 (30.8%)
Public Accommodations	1 (1.1%)	3 (11.5%)
TOTAL	93 (100.0%)	26 (100.0%)

Accomplishments

The Commission on Human Rights has evolved into a unit of government with a unique identity as a result of its separation from the City Planning Department. Mr. Henderson, the director, views efforts toward increased hiring of minorities and women in city government as one of the commission's major accomplishments. He also praised the agency's contract compliance activities and a 1974 agreement with the Lincoln Airport Authority to provide for technical assistance with its affirmative action agreement.

207. Ibid.

208. Ibid.

The commission held four informal factfinding hearings in 1971 and 1972 on rumor control and in the following year on citizen complaints of inequities in city services, such as street repairs and garbage collection.

Historically, the agency's greatest effort has involved police/community relations. In 1970 there was police concern about gatherings of youths, both white and black outside a high school. Before any serious disturbances could arise, the commission conducted a hearing, which served as a successful community education tool. Three years later the commission organized a "ride along" program, in which young people occasionally rode with on-duty police officers.

Commission Chairman Harry Allen said that the commission has been successful in satisfying many individuals who have brought discrimination complaints. Director Henderson pointed to a recently completed indepth study on the housing needs of low-income and minority persons, which was undertaken by the city/county planning department in response to the commission director.

Mayor Schwartzkopf credits the Human Rights Commission for its work in housing and affirmative action. Specifically, he mentioned the director's success in identifying housing for minorities. According to the mayor, "most people have accepted the Human Rights Commission and recognize it has a positive contribution to make.[209]

209. Schwartzkopf interview.

VIII. OMAHA HUMAN RELATIONS DEPARTMENT

Background

A Human Relations Board was created in 1956 when Omaha's first home rule charter was written. The board, consisting of nine members, was appointed by the mayor subject to approval by the city council. Establishment of the board was seen as an attempt by the city government to respond to the needs of the minority community. The board's function was twofold: (1) to advise the mayor and city council on the administration and enforcement of laws and ordinances prohibiting discrimination, and (2) to create and administer educational programs.[210] The board operated for many years without staff. However, in 1964 the city provided an executive secretary (director) and secretary.

In the early 1960s civil disorders in Omaha resulting from racial discrimination in public accommodations, housing, education, employment, and other areas served as an impetus for the creation of a human relations department. In addition to the advisory and educational responsibilities of the Human Relations Board, a need was seen for the creation of a mechanism to handle complaints of individuals alleging discrimination.

In 1963 when the Human Relations Board sought to enforce a city ordinance governing employment practices, the ordinance was declared invalid by the State Supreme Court.[211] The court ruled that State

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210. City of Omaha, Human Relations Department, "Facts About Your City of Omaha Human Relations Department and Human Relations Board."

211. Midwest Employers Council, Inc. v. the City of Omaha, 177 Nebraska 877, 131 N.W. 2d 600.

enabling action was needed before the city of Omaha could pass civil rights legislation. In 1966 when the charter convention met to evaluate Omaha's first decade under home rule, the board's executive secretary proposed creation of a human relations department within city government. On November 1, 1966, this proposal became a reality when the city council passed ordinance 24041.

By law, the department consists of: a Human Relations Board, a Human Relations director, and other subordinate employees.[212] The director, an appointee of the mayor, has administrative responsibilities broadly defined in relationship to (duly enacted) antidiscrimination ordinances and resolutions in employment, open housing, and public accommodations.[213]

The department is organized into three basic divisions: 1) Compliance, 2) Affirmative Action, and 3) Community Relations. The managers of each division report to Human Relations Director A. B. "Buddy" Hogan.

At first, the relationship between the new department and the city government was unstable. Between 1966 and 1973 the department had six directors. In 1971 former Mayor Eugene A. Leahy threatened to abolish the board.[214] Current Omaha Mayor Edward Zorinsky, however, told Advisory Committee staff that he is in full support of the Human Relations Department and sees it as a "vital key to the total efforts of the community."[215]

In 1973 an Urban league subcommittee on charter review recommended that the public vote in the May 1974 general election to amend the city charter to include the Human Relations Department. As it stood, the department was created by ordinance and could be abolished by a majority vote of the city council. The council did not approve the charter amendment, and the issue did not appear on the ballot.[216]

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212. City of Omaha, Nebr., Municipal Code, §3.10.040.

213. Ibid., §3.10.050.

214. Mick Rood, "HRD Chief Seeks Power to Probe Plaints on Police," Omaha Sun Newspapers, June 13, 1974 (hereafter cited as "HRD Chief").

215. Mayor Edward Zorinsky, interview in Omaha, Nebr., Feb. 20, 1975.

216. Charles Washington, interview in Omaha, Nebr., Oct. 10, 1974 (hereafter cited as Washington interview).

Human Relations Board and Human Relations Department

As of March 1975 the Human Relations Board was composed of nine members, two-thirds of whom belonged to minority groups. There were three white members, two blacks, one Mexican American, two Native Americans, and one Asian American. Five of the board members were female. Each member is appointed by the mayor pending approval by the city council. Terms are for 3 years and are staggered to expire every September. The board holds monthly public meetings.

> The HRB's primary responsibility is to advise the Mayor and City Council on all matters pertaining to intergroup relations in the City of Omaha. The HRB also is charged with conducting educational programs to assist in the elimination of prejudice, intolerance, intergroup tensions and discrimination, or which will promote good will, with the object of promoting better human relations. The HRB investigates complaints, problems, and specific situations arising between groups and individuals which result, or may result in tensions, discrimination, or prejudice in the city on account of race, color, creed, national origin or ancestry.[217]

One issue that arose during the Advisory Committee's study was the relationship between the board and the department. Former board Chairman the Reverend James Allen and current Chairman Burton Lewis both expressed the need for a finer delineation of board functions.[218] Urban League board member Charles Washington said he felt there was a decline in the board's importance once its staff component became an official city department.[219]

According to Lawrence Myers, current director of NEOC and former acting director of the Omaha Human Relations Department, the enabling ordinance did not establish a "legal" relationship between the board and the department. In 1964 when funds were first made available for staff, the prevailing attitude was for the staff to serve the board. Once the department was given increased budget, staff, and enforcement power, it began to develop independently of the board.[220]

217. City of Omaha, Nebr., Human Relations Dept., "Annual Report," (1971), p. 10.

218. Rev. James Allen, interview in Omaha, Nebr., Oct. 10, 1974 (hereafter cited as Allen interview). Burton Lewis, interview in Omaha, Nebr., Oct. 11, 1974.

219. Washington interview.

220. Lawrence Myers, interview in Kansas City, Mo., Nov. 1, 1974 (hereafter cited as Myers interview II).

Current Director Hogan agreed with Mr. Myers' assessments. He said the ordinance does not clearly delineate the functions of the board and the department. Since he assumed the directorship, Mr. Hogan has encouraged the board's exercising greater independence from the department. The board should be concerned with community issues, he said, but the department should handle individual complaints. He has also suggested that the board be given a separate budget, but this has not occurred.[221]

James Evans, Omaha Urban League executive, feels that the board is hampered because it has no administrative control over the department's actions.[222] On the other hand, Mr. Myers told Advisory Committee staff, the board once asked the department to gather employment statistics for a proposed public hearing. The department complied, but the board ultimately decided not to hold the hearing. Mr. Myers said that because the board is composed of volunteers, staff should be responsible for the successful execution of projects. An additional source of conflict between the department staff and board members, according to Mr. Myers, is that the department performs many duties in carrying out its mandate and cannot suspend these activities to serve the board.[223]

At the time he was board chairman, the Reverend Allen told Advisory Committee staff that he contemplated a board workshop to review current responsibilities of the board and to develop further guidelines.[224]

Staff

As of February 1975, there were 17 staff persons--9 females, 8 males. Of the total, 11 are minorities--9 blacks, 1 Mexican American, and 1 Native American; 13 staff persons are professionals, and 4 are support personnel. The manager and 7 professionals are assigned to the compliance division; 3 to community relations; and 2 to affirmative action. One professional was hired in fiscal year 1975 to work on a compliance project funded by a 1-year, $18,000 grant from the U.S. Equal Employment Opportunity Commission.

221. A. B. "Buddy" Hogan, interview in Omaha, Nebr., Feb. 20, 1975 (hereafter cited as Hogan interview).

222. James Evans, interview in Omaha, Nebr., Oct. 10, 1974 (hereafter cited as Evans interview).

223. Myers interview II.

224. Allen interview.

Omaha's personnel system classifies employees of the Human Relations Department as human relations representatives or human relations specialists. The specialist position is an entry-level job described as paraprofessional human relations work in a specialized area of the Human Relations Department.[225] Human relations positions I, II, and III require a college degree or comparable experience. The three human relations representatives working in compliance are known as "investigators"--a title more indicative of their job function.

Lawrence McVoy, leader of the Omaha NAACP, and Mr. Washington, of the Urban League, both credit the present leadership of the department with administrative efficiency and competence.[226]

Budget

Although the Human Relations Department requested a budget of $221,000 for calendar year 1974, the city council appropriated $180,674. Budget appropriations for 1973 and 1972 were $173,347 and $127,179, respectively. Between 1972 and 1974 the overall budget showed an increase of approximately 42 percent.

In fiscal year 1975 the department for the first time received a Federal grant of $18,000 from the U.S. Equal Employment Opportunity Commission. This was to assist in the processing of individual discrimination charges deferred from the Federal agency. The contract stipulates that the funds are to be used for staff and supportive services necessary to complete 53 investigations.[227]

Functions

By law the Human Relations Department serves to eliminate and prevent "all forms of discrimination because of race, religion, color, national origin, or ancestry and to insure equal opportunity for all citizens of the city."[228] The department's functions are in four major areas.

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225. City of Omaha, Nebr., Personnel Department, "Human Relations Specialist," (1974), p. 1.

226. Lawrence McVoy, interview in Omaha, Nebr., Oct. 9, 1974.

227. Hogan interview.

228. City of Omaha, Nebr., Municipal Code, §3.10.030.

1. The Open Housing Ordinance:

The housing ordinance enacted in December 1969 prohibits discrimination based on race, color, creed, religion, ancestry or national origin in the purchase or rental of property. It also prohibits discrimination in lending practices affecting the purchase, lease, construction, or maintenance of any real property.[229]

The department, given enforcement power over the ordinance, is authorized to investigate discrimination complaints. If it finds probable cause, it is to use conciliation and persuasion to settle the complaint. If this fails, the department can bring civil suit in Douglas County District Court.[230]

During calendar year 1973, 44 housing complaints were filed with the HRD (41 alleging race discrimination, three alleging discrimination based on national origin). These constituted 16.6 percent of all complaints received that year.

2. The Fair Employment Practices Ordinance (FEP):

The Fair Employment Practices Ordinance, enacted in December 1971, prohibits employment discrimination based on race, color, creed, religion, ancestry, national origin, and sex. Sex discrimination is not included in the housing ordinance. Under this ordinance, no employer with six or more employees may discriminate in hiring, application for employment, tenure, promotion, upgrading, increase in compensation, terms, or conditions of employment.[231]

The original employment ordinance passed in 1971 was amended the following year. Provisions were made for a seven-member Fair Employment Practices Committee. Its function is to conduct hearings in cases of alleged employment discrimination. The human relations director chose three committee members, and the mayor named four. All had to be approved by the city council.[232] A 1974 amendment removed appointment authority from the human relations director, vesting all power in the mayor.

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229. Ibid., §14.06.090.

230. Ibid., §14.06.120.

231. Ibid., §14.04.030.

232. City of Omaha, Nebr., Ordinance 26175 (1971), §1.01, §2.01.

During the same year there were some changes in the complaint process. Below is the path a complaint takes once it is filed with the HRD.

Step 1. Complainant contacts the Human Relations Department within 180 days of alleged discrimination. [formerly 90 days]

Step 2. Complainant files and signs complaint before notary public.

Step 3. Director determines probable cause.

Step 4. Complaint is investigated by a human relations field representative.

Step 5. Determination of discrimination is made.

Step 6. HRD follows through with conference, conciliation, and/or persuasion.

Step 7. If conference, conciliation, and persuasion fail, a hearing is held before the Fair Employment Committee. All concerned must be notified not less than ten (10) days prior to the hearing.

Step 8. Fair Employment Committee makes finding known. The committee will rule either for or against the complainant. If the finding is in favor of the complainant, the respondent will be ordered to cease and desist the prohibited discriminatory practice and may be required to provide back pay for the complainant. If no discrimination is found, the case is dismissed.

Step 9. If complainant or respondent disagrees with findings of the Fair Employment Committee, an appeal may be made to district court by either complainant or respondent within thirty (30) days.[233]

Jim Herbert, HRD compliance manager, told Advisory Committee staff that the 1974 amended ordinance extended the time for investigation of a complaint from 6 months to 12 months from the time the

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233. City of Omaha, Nebr., Human Relations Dept., "Annual Report, " (1972) p. 14 (hereafter cited as "Annual Report - 1972").

complaint was duly filed with the Human Relations Department. The department was given the power to request the mayor to issue a subpoena for materials necessary to the investigation of a complaint.[234] Urban League Executive Director Evans said he hoped the subpoena power would facilitate the disposition of complaints.[235]

The compliance manager told Advisory Committee staff[236] that the majority of staff time is spent processing employment discrimination complaints. Table 8.1 indicates the employment caseload as compared with total caseload.

Table 8.1

Formal Employment Complaints Received As Compared to All Complaints

	Total Number of Complaints	Employment Complaints Number	Employment Complaints % of Complaints
1970	131	46	35.1
1971	228	111	48.7
1972	236	146	61.9
1973	247	169	68.4

Source: Omaha Human Relations Department

The department averages 8 months in processing employment complaints. As of April 19, 1974, 66 of the 169 employment complaints (39.1 percent) were still pending. A primary problem contributing to this backlog has been resistance of some employers to cooperate with staff by denying them access to records. Mr. Herbert said that a major problem with the Fair Employment Practices Ordinance is that it does not provide for penalties against uncooperative respondents unlike the Lincoln ordinance which provides a penalty of not more than 30 days in jail or a fine up to $500.[237]

234. James Herbert, interview in Omaha, Nebr., Oct. 9, 1974 (hereafter cited as Herbert interview).

235. Evans interview.

236. Herbert interview.

237. City of Lincoln, Nebr., Ordinance 10917 (1973).

3. The Affirmative Action Program (AAP):

On September 3, 1971, the city council adopted an affirmative action resolution in response to requirements of the U.S. Department of Housing and Urban Development for a device to measure progress of equal employment opportunity hiring. The resolution prescribes affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, national origin, and political affiliation.[238] The resolution includes sections on nondiscriminatory recruiting, hiring, training, and development. It provides a mechanism for monitoring placement, promotion, pay and other compensation, working conditions, and demotions in order to guard against discriminatory actions by the city.

The equal employment officer of HRD is responsible for periodically reviewing and evaluating the affirmative action program. Each city department is required to file an annual report noting total staff and minority and female staff by job classification. The equal employment officer has "the discretion to review and recommend proper action pursuant to the Annual Reports."[239] The affirmative action resolution does not delineate who has the authority to implement changes if a department which has underutilized minorities and women fails to take corrective action within a reasonable time.

The city personnel board has ultimate authority in employment complaints initiated by classified employees. For nonclassified employees, the mayor has final authority.

Subsequent to the initiation of the affirmative action program on November 2, 1973, Mayor Edward Zorinsky signed executive order 58. This established a four-member Affirmative Action Committee composed of the director of the Personnel Department, the director of the Human Relations Department, the executive coordinator of the Mayor's Commission on the Status of Women, and the equal employment opportunity officer. The EEO officer chairs the committee.

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238. City of Omaha, Nebr., Affirmative Action Resolution No. 1345, Mar. 28, 1972, p. 3 (hereafter cited as Affirmative Action Resolution).

239. Ibid.

The purpose of the committee is to develop a plan for implementing affirmative action in recruitment, hiring, job restructuring, training, promotion, and termination of minorities and women in city employment. To do this the committee has met with department heads and secured voluntary compliance from many. It is currently working on affirmative action goals and timetables.

One of the most significant aspects of the affirmative action program is its impact upon contractors, subcontractors, and vendors who do business with the city. The prime objective is "to assure that contractors, companies, or vendors...or and city-developed projects using city funds extend complete equality of opportunity in employment to all minorities living in the City of Omaha."[240] The affirmative action resolution was amended on March 14, 1972, to allow the human relations director and the city attorney to exempt designated classes of contracts, subcontracts, or purchase orders involving less that $2,500 from incorporating any or all provisions of the program. The amendment further provided "that an Affirmative Action Program Compliance Report be included in the bid-letting stage for the purpose of acquiring information pertinent to those contracts, subcontracts, or purchase orders...falling within the scope and applicability of AAP."[241]

On January 28, 1975, the Human Relations Department introduced to the city council an ordinance which would establish contract compliance criteria for contractors doing business with the city. Director Hogan said compliance requirements under the 1971 AAP are "vague and unenforceable."[242] The new ordinance is a composite of regulations based upon Federal compliance standards. Under the ordinance, the "Human Relations Department could require companies having contracts of $7,500 or more with the city of Omaha...with 25 or more employees the first year of the contract and 15 or more employees thereafter to have an 'affirmative action' plan."[243]

At a public hearing February 18, 1975, the ordinance met stiff opposition from the Greater Omaha Chamber of Commerce and labor unions. Keith Carter, executive vice president of the Chamber, said his organization was concerned that the ordinance "...places far too much power in the hands of the human relations director," and provides "excessively destructive penalties."[244]

240. "Annual Report - 1972".

241. Affirmative Action Resolution.

242. Hogan interview.

243. David Tishendorf, "Ordinance to Ban Employment Bias Gets Heavy Fire," Omaha World Herald, Feb. 19, 1975.

244. Ibid.

Director Hogan responded:

> *Nowhere in this ordinance is there any power, except to recommend. I can't impose any penalties. I can't cancel any contracts. I can only recommend. That certainly is an awesome power, the power to recommend.*[245]

Mr. Hogan can recommend that the city cancel contracts with companies not complying with the affirmatice action plan. After a hearing before the Contract Compliance Committee, the action would be considered by the Fair Employment Practices Committee. Decisions of the latter can be appealed to the courts.[246]

On February 25, 1975, the city council rejected the proposed ordinance.

4. Police/Community Relations:

Members of the minority community frequently complain about the police department. Grievances generally concern "misuse of authority," police hostility, and verbal abuse. In its 1972 "Annual Report" the HRD reported that 10 percent of all complaints filed concerned the police. However:

> ...HRD has no jurisdiction or authority to initiate an investigation of a complaint filed by any citizen of Omaha against the OPD. [Omaha Police Department] The current procedure is that an individual must register his complaint with the Internal Security Section of OPD in person. Because of the seeming lack of action taken by police officials on grievances filed by minority individuals in the past, many minority people have little respect or confidence in the OPD and are, therefore, unwilling to register their complaints directly with them.[247]

HRD utilizes the following procedures when it receives a police complaint.

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245. Ibid.

246. Ibid.

247. "Annual Report - 1972."

1. The individual is told that HRD cannot investigate his or her complaint against OPD and must lodge a grievance in person with the proper officials of OPD.

2. HRD informs the individual that the OPD Internal Security Section will investigate the grievance and give the complainant a written report. If the complainant is skeptical of and has heard that they have accomplished nothing in the past, HRD tries to encourage the complainant with the hope that maybe his case will be the exception and that his complaint will be given a just and fair review.[248]

On May 31, 1974, Mayor Zorinsky's police complaint board met for the first time to "hear unresolved public grievances against police actions." The board consists of the mayor, police chief Richard Anderson, public safety director Richard Roth, and HRD director Hogan. Following this meeting, Mr. Hogan stated:

> *I don't want to bosh the thing, but I am concerned that is already going in the wrong direction. I'm not sure if the chief [Anderson] wants to allow unlimited access [to police reports] to the board. In the first place, if we have the police chief reviewing his own decisions, I question the integrity of that. We do need the chief there for advice and technical help, but not to vote on his own actions.*[249]

248. Ibid.

249. Mike Rood, "HRD Chief."

IX. MAYOR'S COMMISSION ON THE STATUS OF WOMEN (OMAHA)

Background

The history of the Mayor's Commission on the Status of Women in Omaha began in 1967. According to commission documentation, the group functioned in the city for several months that year and then disappeared. Former Omaha Mayor Eugene Leahy reestablished the commission on August 26, 1972, to coincide with his designation of "Women's Equality Day."

The objectives of the commission are to: stress the needs for the development of potentials, interests, and talents of Omaha citizens and encourage the utilization of capable individuals in roles of leadership. These objectives are to provide for:

a. Equal opportunities for men and women;

b. Equality of pay and working conditions irrespective of race, national origin, creed, sex, age, or marital status;

c. Executive and legislative action at national, State, and local levels that will eliminate any inequalities that exist; and

d. Information concerning qualified women, including their fields of specialization to be submitted to the Governor, Mayor, and to all governmental bodies for appointments to boards, commissions and any governmental vacancies as such vacancies might occur.[250]

250. City of Omaha, Mayor's Commission on the Status of Women, "Annual Report," (1973) p. 4 (hereafter referred to as "Annual Report").

According to former Executive Coordinator Ricky Salisbury, the broadness of the commission's mandate affords it much freedom of activity.[251]

Commission

The mayor appointed 40 women representative of various occupations, races, ages, incomes, and attitudes. Although the executive order which created the commission does not stipulate the number of persons to serve as commissioners, the figure has remained at 40. In addition, there are five advisors. Originally, 15 organizations submitted names for the commission and were thus represented on it. Now, appointments are made on an individual basis.

The mayor appoints the executive coordinator and the chairperson appoints the vice-chairperson, secretary, and treasurer; two at-large members who serve for 6 months each are elected by the commission. Originally, terms were for 4 years, but in February 1974 this was amended to 2 years. Terms are staggered.

The commission operates through the following standing committees: 1) children, 2) credit, 3) education, 4) employment, 5) home and family, 6) housing, 7) law and legislation, 8) media, 9) population, reproduction, and health, 10) prisons and law enforcement, 11) programming for women and girls, 12) rape, 13) speakers bureau, 14) talent bank, 15) welfare, 16) women's athletics. It also has a task force on insurance.

Current commission membership includes nine minority women--seven blacks and two Native Americans--and the appointment of a Chicana is expected. One of the advisors is black. Most of the areas of concern for the commission are of significance to all women, including minorities, Ms. Salisbury said.[252]

She also told Advisory Committee staff that the commission has benefited from the continuing support of Mayor Zorinsky and the city council. However, there have been reports that the commission might be merged with the Omaha Human Relations Department. Ms. Salisbury said the commissioners are concerned that this would undermine their commission's effectiveness. However, Ms. Salisbury told Advisory Committee staff she thought that as long as Human Relations Director Hogan remains supportive of the goals of the Commission on the Status of Women, it could continue to be a viable force as part of the Human Relations Department.[253]

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251. Ricky Salisbury, interview in Omaha, Nebr., Oct. 9, 1974.

252. Ibid.

253. Ibid.

Staff

Since November 1972 the commission has been staffed by an executive coordinator. On April 1, 1975, Dr. Marcia A. Hakala assumed this position. One full-time secretary is provided. Some 350 women volunteer their services, enabling the commission to undertake many more projects than would otherwise be possible.

Budget

The commission's budget is channeled through the mayor's office. In 1973, $12,530 was allocated and in 1974 the allocation was $19,660. According to Dr. Hakala, the proposal for a separate budget of $25,000 for the calendar year 1976 has been denied.

Accomplishments

When a survey of 15 city boards and commissions in 1972 revealed that women held only 13 percent of the positions, the commission formed a talent bank to compile the names of qualified women to submit to the mayor for nomination to appointive posts. Ms. Salisbury told Advisory Committee staff in October 1974 that women's participation on these city bodies had increased to 24 percent after the establishment of the talent bank.

Prior to July 1973, women's athletics at the University of Nebraska-Omaha received no funding whatsoever. Commission members met with university officials and secured for the academic year 1973-74 a budget of $22,000 for women's athletics. For the 1975-76 academic year it is $36,000.[254]

The commission operates a rape crisis service 24 hours a day. Victims may call for free legal, medical, or psychological assistance. Over a 12-month period, the commission has distributed some 20,000 brochures on rape prevention and what to do in case of rape. Rape trials are monitored by the commission.

The commission's employment committee researched the number of women employed in city government by job title and salary. The results were used to formulate recommendations to the city concerning affirmative action policies.

254. Letter from Dr. Marcia A. Hakala to Thomas L. Neumann, June 2, 1975, U.S. Commission on Civil Rights, Central States Regional Office files.

Of particular concern to low-income and minority women is the commission's study, done in cooperation with the Center for Applied Research, University of Nebraska at Omaha, on the economic status of households headed by women in Omaha. Using 1970 statistics it was determined that 11.7 percent of all families in Omaha are headed by women, and 43.4 percent of the poverty families in the city are headed by women.255

The commission has also taken stands in support of the Equal Rights Amendment and the Nebraska Equal Opportunity Commission. It also offers assistance to individuals who have encountered discriminatory practices in such areas as credit.

The commission has taken a strong public relations approach to its activities. It keeps in close communication with the press, and distributes widely several brochures of interest to women.

255. "Annual Report," p. 24.

X. CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS

The Nebraska Advisory Committee to the U.S. Commission on Civil Rights found that the primary rights enforcement agency in the State, the Nebraska Equal Opportunity Commission, was created by the legislature as a minimum response to avoid Federal intervention rather than to promote civil rights activity. For most of its history, the NEOC has been generally regarded as lenient toward employers and more demanding of complainants. As Norman Otto, aide to Governor Exon said, "The Equal Opportunity Commission has exonerated many employers and thereby dispelled the notion of widespread discrimination in the State."

The other civil rights agencies examined by the Committee exhibited similar characteristics. What few powers they have are severely limited by law. In general, the budgets they receive are smaller than those of other agencies with analogous responsibilities. Virtually all of the civil rights agencies had need of more staff persons.

Dilemma of Conflicting Expectations

Having inadequate budgets (and in the case of Grand Island, no budget at all), the agencies are acutely vulnerable to charges of ineffectiveness from friend and foe alike. The Advisory Committee found that one problem faced by all eight agencies is "the dilemma of false expectations."

Each agency has a very specific function to perform: usually factfinding or handling of individual complaints.

Constituents, however, see these agencies as "the government" and are disappointed when their requests are referred to another department. Elected officials tend to view the agencies as lightning rods which should absorb the initial shock of constituent discontent. With the possible exception of the Omaha Human Relations Department, none of the commissions enjoyed a working relationship with elected officials. All have had difficulty communicating the limitations of their powers to client groups.

Initiatory Powers and Uniform Laws

Of the four enforcement agencies, the Nebraska Equal Opportunity Commission NEOC and the three human rights agencies in Grand Island, Lincoln, and Omaha, only the Omaha Human Relations Department can initiate an investigation against employers suspected of discrimination. Limited to a case-by-case approach, the others can have only slight influence on systemwide discrimination. They need enabling legislation to undertake investigations of patterns and practices of unlawful discrimination where there is reasonable cause to suspect it exists. Such a systemic approach is less costly and more efficient than the individual case method, and it has been shown to have a stronger impact. It would mean fewer visits to corporation offices, with corresponding fewer disruptions of the latter's operations.

Each enforcement agency has its own unique civil rights laws to implement. Coverage varies, for example, sometimes sex and physical disability are included, sometimes not. Their procedures also differ with respect to conciliation periods, ability to award damages, etc. The current fragmentation is disturbing to employers and complainants alike.

Management Officer; Staff Counsel

The vast majority of the agencies indicated that a frustratingly large amount of their executive directors' time was spent on details not directly related to the agency's mission, such as travel authorizations, general government regulations, reporting forms, and budget proposals. Most agencies had recordkeeping problems of some sort. Only the Commission on Indian Affairs, attached to the Department of Economic Development, had the benefit of a management officer.

None of the agencies had its own legal counsel, although two of the State commissions had recently obtained Federal funds for this purpose and were starting to recruit for the position. The rule is for government agencies to obtain legal assistance from the legal arm of the jurisdiction, e.g., the attorney general or the city attorney. The Nebraska Advisory Committee found that frequently these officials exercise an unduly cautious and restraining influence on the civil rights bodies. A staff counsel could be expected to provide more research focused on the specific interests of the agency or its clientele. Advocacy counsel is seriously needed in agencies which have been so tightly restrained in the past.

Training

In most agencies surveyed, at least one person (either a commissioner or staff member) expressed a need for more training. In the pro-active agencies, the call was for more training in factfinding methods, effective documentation, and the conduct of hearings. Among the enforcement agencies, the focus was upon evidentiary procedures and investigative techniques. Both groups expressed a desire for a clarification of roles between commissioners and staff members.

General Recommendations

Based upon its research of the civil rights agencies in the State, the Nebraska Advisory Committee makes the following recommendations:

1. That the budgets of the eight civil rights agencies be upgraded to a level commensurate with the agency's responsibilities. Only $150,000 of the State's annual budget of $900 million is devoted to civil rights enforcement and intergroup relations are of increasing importance in this country's future. They need to be accorded greater priority throughout Nebraska. Both citizens and elected officials need to monitor more carefully the work of these agencies. But before greater effectiveness can be expected, they must receive better funding.

2. That the enforcement agencies be given the power to initiate investigations of patterns and practices of a denial of civil rights. Only the Omaha Human Relations Department has this power at present.

3. That all civil rights enforcement agencies in Nebraska be given a body of uniform civil rights laws and investigative procedures.

This uniform law should parallel the Federal civil rights laws but incorporate coverage of smaller firms as noted in other recommendations.

4. That each agency be authorized and funded to create an additional staff position of staff counsel or to contract for independent legal services as needed.

5. That each agency make an analysis of its training needs, both for commissioners and for staff members. In this regard, they should make use of professional associations such as the International Association of Official Human Rights Agencies and the National Association of Human Rights Workers.

6. That each agency be listed in the public telephone directory with a toll-free number.

7. That each agency develop and utilize an affirmative action program within its own agency.

8. That other communities in Nebraska be encouraged to establish human relations boards.

Recommendations to Specific Agencies

Nebraska Equal Opportunity Commission

The Advisory Committee recommends that:

1. The Nebraska Legislature amend the enabling legislation so that NEOC commissioners receive a $35 per diem, plus expenses, while performing commission duties.

2. The Nebraska Legislature provide funds for a western field office so that NEOC can better serve the State's Mexican American and Indian populations.

3. The Nebraska Legislature amend the commission's enabling legislation so the director, rather than the commissioners, has administrative control over the staff.

4. The Nebraska Legislature amend the State civil rights laws to provide uniformity in coverage, i.e., increase the coverage of the housing law to include sex, age, disability, and marital status, and the public accommodation law to include age and disability.

5. The Nebraska Legislature amend the Fair Employment Practices Act to pertain to employers having 10 or more workers, rather than 15.

6. The Nebraska Legislature amend NEOC's enabling legislation to give it responsibility for educating the public concerning equal opportunity.

Commission on Indian Affairs

The Advisory Committee recommends that:

1. The Nebraska Legislature amend enabling legislation of the Commission on Indian Affairs to provide for commissioners to receive a per diem plus expenses while performing commission activities other than attending meetings.

2. The Nebraska Legislature also amend the enabling legislation to create an executive board consisting of the commission chairperson, vice-chairperson, secretary, treasurer, and one other commissioner appointed by the chairperson. Such board would be given authority to enter into contracts for materials and consultation services, not to exceed $2,000, without the approval of the full commission.

3. The Nebraska Legislature amend the enabling legislation to require quarterly commission meetings. Special meetings could be called at the request of nine commission members. Any commissioner who fails to attend a commission meeting without a valid excuse will be terminated from the commission.

4. The Nebraska Legislature amend the enabling legislation so the director, rather than the commissioners, has administrative control over staff.

Mexican American Commission

The Advisory Committee recommends that:

1. The Nebraska Legislature amend the enabling legislation of the Mexican-American Commission to establish a three-member executive committee to handle routine commission matters. This would eliminate the need for a commission quorum in many cases.

2. When the opportunity develops, the Mexican-American Commission should hire a female professional.

3. The Governor increase the number of female Commission members.

4. The Nebraska Legislature amend the enabling legislation to provide that commissioners receive a per diem and expenses while performing commission duties other than attending meetings.

Nebraska Commission on the Status of Women

The Advisory Committee recommends that:

1. The Governor increase the number of minority persons serving on the commission.

2. The commission plan more activities that are of concern to low-income and minority women.

Commission on Human Rights of the City of Grand Island

The Advisory Committee recommends that:

1. The City of Grand Island hire one full-time staff person for the commission. This person would also serve as the city's equal employment officer, responsible for recruitment of qualified minorities and women as employees and/or members of boards and commissions.

Lincoln Commission on Human Rights

The Advisory Committee recommends that:

1. The Mayor of Lincoln increase the number of minority persons in the Commission on Human Rights.

2. The Lincoln City Council amend the civil rights ordinances to enable the commission to award damages in cases of proven discrimination.

3. The Lincoln City Council amend the housing discrimination law to prohibit discrimination on the bases of marital status and receipt of public assistance.

Omaha Human Relations Department

The Advisory Committee recommends that:

1. The Omaha City Council amend the Fair Employment Practices Act to allow the HRD to assess penalties to respondents who refuse to cooperate with department investigations.

2. The Omaha City Council pass an ordinance which would allow HRD to "require companies having contracts of $7,500 or more with the city of

Omaha...with 25 or more employees the first year of the contract and 15 or more employees thereafter to have an 'affirmative action' plan."

3. The Human Relations Department assign more staff time to support activities of the Human Relations Board.

Mayor's Commission on the Status of Women (Omaha)

The Advisory Committee recommends that:

1. The Mayor increase the number of minority persons on the commission in order to maintain representation of all minority groups.

APPENDIX A

(LIST OF NEBRASKA'S OFFICIAL CIVIL RIGHTS AGENCIES)

NEBRASKA EQUAL OPPORTUNITY COMMISSION

1620 "M" Street
Lincoln, Nebraska 68508
Telephone: (402) 471-2022, 24, 25, 26
Field Office: 5620 Ames Avenue, Suite 110
Omaha, Nebraska 68104
Executive Director: Lawrence R. Myers

Commissioners:

Essie S. Burden, Chairperson	Lincoln
Elizabeth Carlson	Blair
Frances Dunson	Omaha
Paul Ess	Lincoln
Daniel Ferreyra	Scottsbluff
Daniel Holstein	Winnebago
Phil Ratner	Omaha

NEBRASKA COMMISSION ON INDIAN AFFAIRS

Box 94666 Capitol Building
Lincoln, Nebraska 68509
Telephone: (402) 477-8984
Field Office: 1516 1st Ave.
P.O. Box 843
Scottsbluff, Nebraska 69361
Executive Director: Robert B. Mackey

Commissioners:

Imogene Boucher	Lincoln	Louis La Rose	Winnebago
Lawrence Cook	Macy	Willard Mackey, Sr.	Niobrara
Martha M. Gibbs	Omaha	Clement Mitchell	Macy
Lawrence Gilpin	Macy	Mark Monroe	Alliance
Delores Kills-In-Water	Minatare	Nicky Solomon	Winnebago
Gordon Kitto, Sr.	Niobrara	Pauline Tyndall	Macy
Donald La Pointe	Niobrara	Felix White, Sr.	Winnebago

NEBRASKA MEXICAN-AMERICAN COMMISSION

P.O. Box 94848
Lincoln, Nebraska 68508
Telephone: (402) 471-2791
Field Office: 1516 1st Ave.
Scottsbluff, Nebraska 69361

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